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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2008

OR

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

For the transition period from to

Commission file number 1-16489

FMC TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**36-4412642** (I.R.S. Employer Identification No.)
1803 Gears Road, Houston, Texas (Address of principal executive offices)	**77067** (Zip Code)

Registrant's telephone number, including area code: 281/591-4000

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

Title of each class	Name of each exchange on which registered
Common Stock, $0.01 par value	New York Stock Exchange
Preferred Share Purchase Rights	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

INDICATE BY CHECK MARK IF THE REGISTRANT IS A WELL-KNOWN SEASONED ISSUER, AS DEFINED IN RULE 405 OF THE SECURITIES ACT. YES ☒ NO ☐

INDICATE BY CHECK MARK IF THE REGISTRANT IS NOT REQUIRED TO FILE REPORTS PURSUANT TO SECTION 13 OR 15(d) OF THE EXCHANGE ACT. YES ☐ NO ☒

INDICATE BY CHECK MARK WHETHER THE REGISTRANT (1) HAS FILED ALL REPORTS REQUIRED TO BE FILED BY SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 DURING THE PRECEDING 12 MONTHS (OR FOR SUCH SHORTER PERIOD THAT THE REGISTRANT WAS REQUIRED TO FILE SUCH REPORTS), AND (2) HAS BEEN SUBJECT TO SUCH FILING REQUIREMENTS FOR THE PAST 90 DAYS. YES ☒ NO ☐

INDICATE BY CHECK MARK IF DISCLOSURE OF DELINQUENT FILERS PURSUANT TO ITEM 405 OF REGULATION S-K IS NOT CONTAINED HEREIN, AND WILL NOT BE CONTAINED, TO THE BEST OF REGISTRANT'S KNOWLEDGE, IN DEFINITIVE PROXY OR INFORMATION STATEMENTS INCORPORATED BY REFERENCE IN PART III OF THIS FORM 10-K OR ANY AMENDMENT TO THIS FORM 10-K. ☐

INDICATE BY CHECK MARK WHETHER THE REGISTRANT IS A LARGE ACCELERATED FILER, AN ACCELERATED FILER, A NON-ACCELERATED FILER, OR A SMALLER REPORTING COMPANY. SEE DEFINITION OF "ACCELERATED FILER AND LARGE ACCELERATED FILER" IN RULE 12b-2 OF THE EXCHANGE ACT.

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 ☒

THE AGGREGATE MARKET VALUE OF THE REGISTRANT'S COMMON STOCK HELD BY NON-AFFILIATES OF THE REGISTRANT, DETERMINED BY MULTIPLYING THE OUTSTANDING SHARES ON JUNE 30, 2008, BY THE CLOSING PRICE ON SUCH DAY OF $73.03 AS REPORTED ON THE NEW YORK STOCK EXCHANGE, WAS $7,165,910,713.*

THE NUMBER OF SHARES OF THE REGISTRANT'S COMMON STOCK, $0.01 PAR VALUE, OUTSTANDING AS OF FEBRUARY 20, 2009 WAS 125,710,920.

DOCUMENTS INCORPORATED BY REFERENCE

DOCUMENT	FORM 10-K REFERENCE
Portions of Proxy Statement for the 2009 Annual Meeting of Stockholders	Part III

* Excludes 29,662,415 shares of the registrant's Common Stock held by directors, officers and holders of more than 5% of the registrant's Common Stock as of June 30, 2008. Exclusion of shares held by any person should not be construed to indicate that such person or entity possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant, or that such person or entity is controlled by or under common control with the registrant.

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PART I

ITEM 1. BUSINESS

OVERVIEW

We are a global provider of technology solutions for the energy industry. We design, manufacture and service technologically sophisticated systems and products such as subsea production and processing systems, surface wellhead production systems, high pressure fluid control equipment, measurement solutions, and marine loading systems for the oil and gas industry. Our operations are aggregated into two reportable segments: Energy Production Systems and Energy Processing Systems. Financial information about our business segments is incorporated herein by reference from Note 19 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

We were incorporated in November 2000 under Delaware law and were a wholly owned subsidiary of FMC Corporation until our initial public offering in June 2001, when 17% of our common stock was sold to the public. On December 31, 2001, FMC Corporation distributed its remaining 83% ownership of our stock to FMC Corporation's stockholders in the form of a dividend.

In October 2007, we announced the intention to spin-off 100% of our FoodTech and Airport Systems businesses. On July 12, 2008, our Board of Directors approved the spin-off of the businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend to our shareholders. We distributed 0.216 shares of John Bean Technologies Corporation ("JBT") common stock for every share of our stock outstanding as of the close of business on July 22, 2008. We did not retain any shares of JBT common stock. JBT is now an independent public company traded on the New York Stock Exchange (symbol JBT). The results of JBT have been reported as discontinued operations for all periods presented.

Prior to the spin-off, we received necessary regulatory approvals, including a private letter ruling from the Internal Revenue Service ("IRS") regarding the tax-free status of the transaction for U.S. federal income tax purposes and a declaration of effectiveness from the Securities and Exchange Commission ("SEC") for JBT's registration statement on Form 10. For additional information related to the spin-off of JBT, see Note 3 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

Our principal executive offices are located at 1803 Gears Road, Houston, Texas 77067. As used in this report, except where otherwise stated or indicated by the context, all references to "FMC Technologies," "we," "us," or "our" are to FMC Technologies, Inc. and its consolidated subsidiaries.

Our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge through our website at www.fmctechnologies.com, under "Investor Center—SEC Filings." Our Annual Report on Form 10-K for the year ended December 31, 2008, is also available in print to any stockholder free of charge upon written request submitted to Jeffrey W. Carr, Vice President, General Counsel and Secretary, FMC Technologies, Inc., 1803 Gears Road, Houston, Texas, 77067.

Throughout this Annual Report on Form 10-K, we incorporate by reference certain information from our Proxy Statement for the 2009 Annual Meeting of Stockholders. The SEC allows us to disclose important information by referring to it in that manner. Please refer to such information. We provide stockholders with an annual report containing financial information that has been examined and reported upon, with an opinion expressed thereon by an independent registered public accounting firm. On or about March 30, 2009, our Proxy Statement for the 2009 Annual Meeting of Stockholders will be available on our website under "Investor Center—SEC Filings." Similarly, our 2008 Annual Report to Stockholders will be available on our website under "Investor Center—Annual Reports."

BUSINESS SEGMENTS

Energy Production Systems

Energy Production Systems designs and manufactures systems and provides services used by oil and gas companies involved in land and offshore, including deepwater, exploration and production of crude oil and gas. Our production systems control the flow of oil and gas from producing wells. We specialize in offshore production systems and have manufacturing facilities near most of the world's principal offshore oil and gas producing basins. We market our products primarily through our own technical sales organization. Energy Production Systems revenue comprised approximately 81%, 79% and 77% of our consolidated revenue in 2008, 2007 and 2006, respectively.

Principal Products and Services

Subsea Production Systems. Subsea systems represented approximately 66%, 62% and 61% of our consolidated revenues in 2008, 2007 and 2006, respectively. Our systems are used in the offshore production of crude oil and natural gas. Subsea systems are placed on the seafloor and are used to control the flow of crude oil and natural gas from the reservoir to a host processing facility, such as a floating production facility, a fixed platform, or an onshore facility. Our subsea equipment is remotely controlled by the host processing facility.

The design and manufacture of our subsea systems require a high degree of technical expertise and innovation. Some of our systems are designed to withstand exposure to the extreme hydrostatic pressure that deepwater environments present as well as internal pressures of up to 15,000 pounds per square inch ("psi") and temperatures in excess of 350º F. The foundation of this business is our technology and engineering expertise.

The development of our integrated subsea systems usually includes initial engineering design studies, subsea trees, control systems, manifolds, seabed template systems, flowline connection and tie-in systems, installation and workover tools, and subsea wellheads. In order to provide these systems and services, we utilize engineering, project management, global procurement, manufacturing, assembly and testing capabilities. Further, we provide service technicians for installation assistance and field support for commissioning, intervention and maintenance of our subsea systems throughout the life of the oilfield. Additionally, we provide tools such as our riserless light well intervention system for certain well workover and intervention tasks.

Surface Production Systems. In addition to our subsea systems we provide a full range of surface wellheads and production systems for both standard service and critical service applications. Surface production systems, or trees, are used to control and regulate the flow of oil and gas from the well. Our surface products and systems are used worldwide on both land and offshore platforms and can be used in difficult climatic conditions, such as arctic cold or desert high temperatures. We support our customers through leading engineering, manufacturing, field installation support, and aftermarket services. Surface products and systems represented approximately 14%, 16% and 16% of our consolidated revenues in 2008, 2007 and 2006, respectively.

Separation Systems. We design and manufacture systems that separate production flows from wells into oil, gas and water. Our separation technology improves upon conventional separation technologies by moving the flow in a spiral, spinning motion. This causes the elements of the flow stream to separate more efficiently. These systems are currently capable of operating onshore or offshore and subsea began successful operation in 2007.

Status of Product Development

We continue to advance the development of subsea separation processing technologies. Subsea processing is an emerging technology in the industry, which we believe offers considerable benefits to the oil and gas producer, enabling a more rapid and cost-efficient approach to separation. If separation is performed on the seabed, the hydrostatic pressure of the fluid going from the seabed to the surface is reduced, allowing the well to flow more efficiently, accelerating production and enabling higher recoveries from the subsea reservoir. Also, it can significantly reduce the capital investment required for floating vessels or platforms, since the integration of processing capabilities will not be required. We introduced this technology commercially with StatoilHydro's Tordis field in the North Sea during 2007. We continue to advance our in-line separation technology, leveraging our patented products for gas, liquid and sand separation. These in-line technologies enable operators to achieve complete phase separation by using pipe segments and cyclonic technology instead of using conventional technology that requires several large vessels to do the same job. Inline separators will be a cost-effective option in a number of surface and subsea applications, requiring only 20% of the weight and space required by most conventional separator systems.

Another subsea processing technology we believe will serve this industry in the future is gas compression in subsea applications. Subsea gas compression allows the operator to maintain gas production as the reservoir pressure declines. It also boosts gas pressure and allows for transportation of the gas to shore without the need for surface facilities. We are currently developing subsea control systems for gas compression suitable for large pressure ratios and volume flow.

As the rapidly growing installed base of subsea wells matures and requires maintenance similar to those on land, we believe using wireline or coiled tubing to access the downhole portion of the well will require riserless well servicing equipment that can be deployed from a small vessel. We have developed and deployed a wireline-based system that is currently working in the North Sea, and are in the process of developing two more advanced units that will go into operation in 2009.

Much of the subsea activity today is taking place in deeper waters, requiring major enhancements of our existing technologies to increase the performance of our equipment and the value of our systems to our customers in these challenging environments. For this purpose we have developed an Enhanced Vertical Deepwater Tree (EVDT) system, which includes technologically advanced controls and communications capable of installation and operation in water depths up to 10,000 feet and with well bore pressures up to 10,000 psi. The system has been designed to minimize installation and operating costs borne by the operator, and provide a highly reliable fixture on the seabed to control the flow of hydrocarbons from the well. The first EVDT units were installed in Brazil for Shell's BC-10 field and in the Gulf of Mexico for Shell's Perdido field during 2008. One EVDT unit in the Perdido field was installed at a water depth of 9,356 feet, or 2,852 meters, setting the world record for the deepest subsea tree installation.

Capital Intensity

Most of the systems and products that we supply for subsea applications are highly engineered to meet the unique demands of our customers and are typically ordered one or two years prior to installation. We commonly receive advance and progress payments from our customers in order to fund initial development and our working capital requirements. In addition, due to factors such as higher engineering content and our manufacturing strategy of outsourcing certain low value-added manufacturing activities, we believe that our Energy Production Systems business is less capital intensive than our competitors' businesses.

Dependence on Key Customers

Generally, our customers in this segment are major integrated oil or exploration and production companies.

With our integrated systems for subsea production, we have aggressively pursued alliances with oil and gas companies that are actively engaged in the subsea development of crude oil and natural gas. Development of subsea fields, particularly in deepwater environments, involves substantial capital investments by our customers. Our customers have sought the security of alliances with us to ensure timely and cost-effective delivery of subsea and other energy-related systems that provide an integrated solution to their needs. Our alliances establish important ongoing relationships with our customers. While our alliances do not always contractually commit our customers to purchase our systems and services, they have historically led to, and we expect that they will continue to result in such purchases. For instance, we have an alliance of this type with StatoilHydro. In 2008, we generated approximately 19% of our consolidated revenues from StatoilHydro.

The loss of one or more of our significant oil and gas company customers could have a material adverse effect on our Energy Production Systems business segment.

Competition

Energy Production Systems competes with other companies that supply subsea systems, surface production equipment, and separation systems, and with smaller companies that are focused on a specific application, technology or geographical niche in which we operate. Companies such as Cameron International Corporation, GE Vetco Gray, Aker Solutions, and Wood Group compete with us in the marketplace across our various product lines.

Some of the factors on which we compete include reliability, cost-effective technology, execution and delivery. Our competitive strengths include our intellectual capital, experience base and breadth of technologies and products that enable us to design a unique solution for our customers' project requirements while incorporating standardized components to contain costs. We have a strong presence in all of the major producing basins. Our deepwater expertise, experience and technology help us to maintain a leadership position in subsea systems.

Energy Processing Systems

Energy Processing Systems designs, manufactures and supplies technologically advanced high pressure valves and fittings for oilfield service customers. We also manufacture and supply liquid and gas measurement and transportation equipment and systems to customers involved in the production, transportation and processing of crude oil, natural gas and petroleum-based refined products. We sell to the end user through authorized representatives, distributor networks and our own technical sales organization. The segment's products include fluid control, measurement solutions, loading systems, material handling systems and blending and transfer systems. Energy Processing Systems revenue comprised approximately 19%, 21% and 23% of our consolidated revenue in 2008, 2007 and 2006, respectively.

Principal Products and Services

Fluid Control. We design and manufacture flowline products, under the WECO®/Chiksan® trademarks, and pumps and valves used in well completion and stimulation activities by major oilfield service companies, such as Schlumberger Limited, BJ Services Company, Halliburton Company and Weatherford International Ltd.

Our flowline products are used in equipment that pumps corrosive and/or erosive fluid into a well during the well construction or stimulation process. Our reciprocating pump product line includes duplex, triplex and quintuplex pumps utilized in a variety of applications. The performance of this business typically rises and falls with variations in the active rig count throughout the world.

Measurement Solutions Systems. Our measurement systems provide solutions for use in custody transfer of crude oil, natural gas and refined products. We combine advanced measurement technology with state-of-the-art electronics and supervisory control systems to provide the measurement of both liquids and gases for purposes of verifying ownership and determining revenue and tax obligations. Our Smith Meter product lines are well-established in the industry.

Loading Systems. We provide land and marine-based fluid loading and transfer systems primarily to the oil and gas industry. Our systems are capable of loading and offloading marine vessels transporting a wide range of fluids, such as crude oil, liquefied natural gas and refined products. While these systems are typically constructed on a fixed jetty platform, we have also developed advanced loading systems that can be mounted on a vessel or structure to facilitate ship-to-ship or tandem loading and offloading operations in open seas or exposed locations.

Material Handling Systems. We provide material handling systems, including bulk conveying systems to the power generation industry. We provide innovative solutions for conveying, feeding, screening and orienting bulk product for customers in diverse industries. Our process, engineering, mechanical design and project management expertise enable us to execute these projects on a turnkey basis.

Blending and Transfer Systems. We provide engineering, design and construction management services in connection with the application of blending technology, process controls and automation for manufacturers in the lubricant, petroleum, additive, fuel and chemical industries.

Dependence on Key Customers

No single Energy Processing Systems customer accounts for more than 10% of our annual consolidated revenue.

Competition

Energy Processing Systems currently has the first or second largest market share for its primary products and services. Some of the factors upon which we compete include technological innovation, reliability and product quality. Energy Processing Systems competes with a number of companies primarily in the gas and liquid custody transfer, high-pressure pumping services, and fluid loading and transfer systems industries.

OTHER BUSINESS INFORMATION RELEVANT TO OUR BUSINESS SEGMENTS

Order Backlog

Information regarding order backlog is incorporated herein by reference from the section entitled “Inbound Orders and Order Backlog” in Item 7 of this Annual Report on Form 10-K.

Sources and Availability of Raw Materials

Our business segments purchase carbon steel, stainless steel, aluminum and steel castings and forgings both domestically and internationally. We do not use single source suppliers for the majority of our raw material purchases and believe the available supplies of raw materials are adequate to meet our needs.

Research and Development

We are engaged in research and development activities directed primarily toward the improvement of existing products and services, the design of specialized products to meet specific customer needs and the development of new products, processes and services. A large part of our product development spending in the past has focused on the standardization of our subsea and surface product lines. With standardized products, we can minimize engineering content, improve inventory utilization, and reduce cost through value engineering. Additional financial information about Company-sponsored research and development activities is incorporated herein by reference from Note 19 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

Patents, Trademarks and Other Intellectual Property

We own a number of U.S. and foreign patents, trademarks and licenses that are cumulatively important to our businesses. As part of our ongoing research and development, we seek patents when appropriate for new products and product improvements. We have approximately 900 issued patents and pending patent applications worldwide. Further, we license intellectual property rights to or from third parties. We also own numerous U.S. and foreign trademarks and trade names and have approximately 300 registrations and pending applications in the United States and abroad.

We protect and promote our intellectual property portfolio and take those actions we deem appropriate to enforce our intellectual property rights and to defend our right to sell our products. We do not believe, however, that the loss of any one patent, trademark, or license or group of related patents, trademarks, or licenses would have a material adverse effect on our overall business.

Employees

As of December 31, 2008, we had approximately 9,800 full-time employees; approximately 2,800 in the United States and 7,000 in non-U.S. locations. A small percentage of our U.S. employees are represented by labor unions.

Financial Information about Geographic Areas

The majority of our consolidated revenue and segment operating profit are generated in markets outside of the United States. Energy Production Systems and Energy Processing Systems revenue is dependent upon worldwide oil and gas exploration and production activity. Financial information about geographic areas is incorporated herein by reference from Note 19 to our consolidated financial statements in Item 8 of this Annual Report on Form 10-K.

ITEM 1A. RISK FACTORS

Important risk factors that could impact our ability to achieve our anticipated operating results and growth plan goals are presented below. The following risk factors should be read in conjunction with discussions of our business and the factors affecting our business located elsewhere in this Annual Report on Form 10-K and in our other filings with the SEC.

INDUSTRY-RELATED RISKS

- **Demand for the systems and services provided by our businesses depends on oil and gas industry activity and expenditure levels, which are directly affected by trends in the demand for and price of crude oil and natural gas.**

We are substantially dependent on conditions in the oil and gas industry and that industry's willingness and ability to spend capital on the exploration for and development of crude oil and natural gas. Any substantial or extended decline in these expenditures may result in the reduced discovery and development of new reserves of oil and gas and the reduced exploitation of existing wells, which could adversely affect demand for our systems and services. The level of spending is generally dependent on current and anticipated crude oil and natural gas prices, which have been volatile in the past.

- **The industries in which we operate or have operated expose us to potential liabilities arising out of the installation or use of our systems that could adversely affect our financial condition.**

We operate in an industry that is subject to equipment defects, malfunctions and failures, equipment misuse and natural disasters, the occurrence of which may result in uncontrollable flows of gas or well fluids, fires and explosions. Although we have obtained insurance against many of these risks, we cannot assure that our insurance will be adequate to cover our liabilities. Further, we cannot assure that insurance will generally be available in the future or, if available, that premiums will be commercially justifiable. If we incur substantial liability and the damages are not covered by insurance or are in excess of policy limits, or if we were to incur liability at a time when we are not able to obtain liability insurance, our business, results of operations or financial condition could be materially adversely affected.

- **Our customers' industries are undergoing continuing consolidation that may impact our results of operations.**

Some of our largest customers have consolidated and are using their size and purchasing power to achieve economies of scale and pricing concessions. This consolidation may result in reduced capital spending by such customers or the acquisition of one or more of our other primary customers, which may lead to decreased demand for our products and services. We cannot assure you that we will be able to maintain our level of sales to any customer that has consolidated or replace that revenue with increased business activities with other customers. As a result, this consolidation activity could have a significant negative impact on our results of operations or financial condition. We are unable to predict what effect consolidations in the industries may have on prices, capital spending by our customers, our selling strategies, our competitive position, our ability to retain customers or our ability to negotiate favorable agreements with our customers.

- **Our operations and the industries in which we operate are subject to a variety of U.S. and international laws and regulations that may increase our costs, limit the demand for our products and services or restrict our operations.**

We depend on the demand for our systems and services from oil and gas companies. This demand is affected by changing taxes, price controls and other laws and regulations relating to the oil and gas industry. For example, the adoption of laws and regulations curtailing exploration and development of drilling for crude oil and natural gas in our areas of operation for economic, environmental or other reasons could adversely affect our operations by limiting demand for our systems and services. In light of our foreign operations and sales, we are also subject to changes in foreign laws and regulations that may encourage or require hiring of local contractors or require foreign contractors to employ citizens of, or purchase supplies from, a particular non-U.S. jurisdiction.

In addition, environmental laws and regulations affect the systems and services we design, market and sell, as well as the facilities where we manufacture our systems. We are required to invest financial and managerial resources to comply with environmental laws and regulations and anticipate that we will continue to be required to do so in the future. Because these laws and regulations change frequently, we are unable to predict the cost or impact that they may have on our businesses. The modification of existing laws or regulations or the adoption of new laws or regulations imposing more stringent environmental restrictions could adversely affect our operations.

COMPANY-RELATED RISKS

- **Disruptions in the political, regulatory, economic and social conditions of the foreign countries in which we conduct business could adversely affect our business or results of operations.**

We operate manufacturing facilities in 13 countries outside of the United States, and approximately 76% of our 2008 revenue was generated internationally. Instability and unforeseen changes in the international markets in which we conduct business, including economically and politically volatile areas such as North Africa, West Africa, the Middle East, Latin America and the Asia Pacific region, could cause or contribute to factors that could have an adverse effect on the demand for our systems and services, our financial condition or our results of operations. These factors include:

- foreign currency fluctuations or currency restrictions;
- fluctuations in the interest rate component of forward foreign currency rates;

- nationalization and expropriation;
- potentially burdensome taxation;
- inflationary and recessionary markets, including capital and equity markets;
- civil unrest, labor issues, political instability, terrorist attacks, military activity and wars;
- supply disruptions in key oil producing countries;
- ability of the Organization of Petroleum Exporting Countries (OPEC) to set and maintain production levels and pricing;
- seizure of assets;
- trade restrictions, trade protection measures or price controls;
- foreign ownership restrictions;
- import or export licensing requirements;
- restrictions on operations, trade practices, trade partners and investment decisions resulting from domestic and foreign laws and regulations;
- changes in governmental laws and regulations and the level of enforcement of laws and regulations;
- inability to repatriate income or capital; and
- reductions in the availability of qualified personnel.

Because a significant portion of our revenue is denominated in foreign currencies, changes in exchange rates will produce fluctuations in our costs and earnings, and may also affect the book value of our assets located outside of the U.S. and the amount of our stockholders' equity. Although it is our policy to seek to minimize our currency exposure by engaging in hedging transactions where appropriate, we cannot assure you that our efforts will be successful. To the extent we sell our products and services in foreign markets, currency fluctuations may result in our products and services becoming too expensive for foreign customers.

- **We may lose money on fixed-price contracts.**

As is customary for the business areas in which we operate, we agree to provide products and services under fixed-price contracts. Under these contracts, we are typically responsible for cost overruns. Our actual costs and any gross profit realized on these fixed-price contracts may vary from the estimated amounts on which these contracts were originally based. There is inherent risk in the estimation process, including significant unforeseen technical and logistical challenges or longer than expected lead times. A fixed-price contract may prohibit our ability to mitigate the impact of unanticipated increases in raw material prices (including the price of steel) through increased pricing. Depending on the size of a project, variations from estimated contract performance could have a significant impact on our operating results.

- **Due to the types of contracts we enter into, the cumulative loss of several major contracts or alliances may have an adverse effect on our results of operations.**

We often enter into large, long-term contracts and leases that, collectively, represent a significant portion of our revenue. These agreements, if terminated or breached, may have a larger impact on our operating results or our financial condition than shorter-term contracts due to the value at risk. If we were to lose several key alliances or agreements over a relatively short period of time we could experience a significant adverse impact on our financial condition or results of operations.

- **Our businesses are dependent on the continuing services of certain of our key managers and employees.**

We depend on our senior executive officers and other key personnel. The loss of any of these officers or key management could adversely impact our business if we are unable to implement key strategies or transactions in their absence. In addition, competition for qualified employees among companies that rely heavily on engineering and technology (as we do) is intense. The loss of qualified employees or an inability to attract, retain and motivate additional highly skilled employees required for the operation and expansion of our business could hinder our ability to conduct research activities successfully and develop marketable products and services.

- **Increased costs of raw materials and other components may result in increased operating expenses and adversely affect our results of operations and cash flows.**

Our results of operations may be adversely affected by our inability to manage the rising costs and availability of raw materials and components used in our wide variety of products and systems. Unexpected changes in the size and timing of regional and/or product markets, particularly for short lead-time products, could affect our results of operations and our cash flows.

- **Our success depends on our ability to implement new technologies and services.**

Our success depends on the ongoing development and implementation of new product designs and improvements, and on our ability to protect and maintain critical intellectual property assets related to these developments. If we are not able to obtain patent or other protection of our technology, we may not be able to continue to develop systems, services and technologies to meet evolving industry requirements, and if so, at prices acceptable to our customers.

Some of our competitors are large national and multinational companies that may be able to devote greater resources to research and development of new systems, services and technologies than we are able to do. Moreover, some of our competitors operate in narrow business areas, allowing them to concentrate their research and development efforts directly on products and services for those areas. If we are unable to compete effectively given these risks, our business, results of operations and financial condition could be adversely affected.

- **Our inability to deliver our backlog on time could affect our future sales and profitability and our relationships with our customers.**

Many of the contracts we enter into with our customers require long manufacturing lead times and may contain penalty clauses relating to on-time delivery. A failure by us to deliver in accordance with customer expectations could subject us to financial penalties and may result in damage to existing customer relationships. Additionally, we include within our earnings guidance to the financial markets our expectations regarding the timing of delivery of product currently in backlog. Failure to deliver backlog in accordance with expectations could negatively impact our financial performance and thus cause adverse changes in the market price of our outstanding common stock.

- **Our businesses are subject to a variety of governmental regulation.**

We are exposed to a variety of federal, state, local and international laws and regulations relating to matters such as environmental, health and safety, labor and employment, import/export control, currency exchange, bribery and corruption and taxation. These laws and regulations are complex, change frequently and have tended to become more stringent over time. In the event the scope of these laws and regulations expand in the future, the incremental cost of compliance could adversely impact our financial condition, results of operations or cash flows.

- **Many of our customers' activity levels and spending for our products and services may be affected by the current deterioration in the credit markets and significant reductions in commodity prices.**

The recent worldwide shortage of liquidity and credit to fund industrial business operations, combined with substantial losses in worldwide equity markets, could lead to an extended global economic recession. Many of our customers finance their activities through cash flow from operations, the incurrence of debt or the issuance of equity. Recently, there has been a significant decline in the credit markets and the availability of credit. Additionally, many of our customers' equity values have substantially declined. The combination of a reduction of cash flow resulting from declines in commodity prices, a reduction in borrowing bases under reserve based credit facilities and the lack of availability of debt or equity financing may result in a significant reduction in our customers' spending for our products and services. During the second half of 2008, and now continuing into 2009, crude oil prices have dropped substantially. An extended worldwide economic recession could lead to further reductions in worldwide demand for energy and thus lower oil and natural gas prices. Any prolonged reduction in oil and natural gas prices is likely to depress short-term exploration, development and production and expenditure levels. Oil and gas company perceptions of longer-term lower oil and natural gas prices may reduce or defer major expenditures on long-term, large scale development projects. Lower levels of oil and gas industry activity and expenditure levels could result in a decline in demand for our systems and services and could have an adverse effect on our revenue and profitability. These same factors may result in our customers' inability to fulfill their contractual obligations to us.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We lease our executive offices in Houston, Texas. We operate 19 manufacturing facilities in 14 countries.

We believe our properties and facilities meet present requirements and are in good operating condition and that each of our significant manufacturing facilities is operating at a level consistent with the requirements of the industry in which it operates.

The significant production properties for the Energy Production Systems operations currently are:

Location	Square Feet (approximate)	Leased or Owned
United States:		
Houston, Texas	390,000	Leased
Oklahoma City, Oklahoma	31,000	Leased
International:		
*Kongsberg, Norway	657,000	Leased
Rio de Janeiro, Brazil	517,000	Owned
Nusajaya, Malaysia	392,000	Owned
Singapore	263,000	Owned
*Sens, France	185,000	Owned
Dunfermline, Scotland	162,000	Owned
Pasir Gudang, Malaysia	116,000	Leased
Maracaibo, Venezuela	60,000	Owned
Edmonton, Canada	57,000	Leased
Jakarta, Indonesia	44,000	Owned
Collecchio, Italy	34,000	Leased
Arnhem, The Netherlands	26,000	Owned

* These facilities are production properties for both Energy Production Systems and Energy Processing Systems.

The significant production properties for the Energy Processing Systems operations currently are:

Location	Square Feet (approximate)	Leased or Owned
United States:		
Tupelo, Mississippi	330,000	Owned
Stephenville, Texas	300,000	Owned
Erie, Pennsylvania	240,000	Owned
International:		
Ellerbek, Germany	200,000	Owned
Changshu, China	64,000	Leased

ITEM 3. LEGAL PROCEEDINGS

We are the named defendant in a number of lawsuits; however, while the results of litigation cannot be predicted with certainty, management believes that the most probable, ultimate resolution of these matters will not have a material adverse effect on our consolidated financial position, results of operations or cash flows.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of fiscal year 2008.

Pursuant to General Instruction G(3), the information regarding our executive officers called for by Item 401(b) of Regulation S-K is hereby included in Part I of this Form 10-K.

Executive Officers of the Registrant

The executive officers of FMC Technologies, together with the offices currently held by them, their business experience and their ages as of February 27, 2009, are as follows:

Name	Age	Office, year of election and other information for past five years
Peter D. Kinnear	61	Chairman, President and Chief Executive Officer (2008); President and Chief Executive Officer (2007); President and Chief Operating Officer (2006); Executive Vice President (2004); Vice President (2001)
William H. Schumann, III	58	Executive Vice President and Chief Financial Officer (2007); Senior Vice President and Chief Financial Officer (2001); Treasurer (2002-2004)
John T. Gremp	57	Executive Vice President—Energy Systems (2007); Vice President and Group Manager—Energy Production (2004), General Manager (2002)
Tore H. Halvorsen	54	Senior Vice President—Global Subsea Production Systems (2007); Vice President—Subsea Systems Eastern Hemisphere (2004); Managing Director of FMC Kongsberg Subsea AS (1994)
Robert L. Potter	58	Senior Vice President—Energy Processing and Global Surface Wellhead (2007); Vice President—Energy Processing Systems (2001)
Jeffrey W. Carr	52	Vice President, General Counsel and Secretary (2001)
Maryann T. Seaman	46	Vice President, Administration (2007); Director of Investor Relations and Corporate Development (2003)
Jay A. Nutt	45	Corporate Controller (2008); Controller—Energy Systems (2007); Controller—Energy Production Systems (2001)

No family relationships exist among any of the above-listed officers, and there are no arrangements or understandings between any of the above-listed officers and any other person pursuant to which they serve as an officer. During the past five years, none of the above-listed officers have been involved in any legal proceedings as defined in Item 401(f) of Regulation S-K. All officers are elected to hold office until their successors are elected and qualified.

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PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Our common stock is listed on the New York Stock Exchange under the symbol FTI. Market information with respect to our common stock is incorporated herein by reference from Note 20 to our consolidated financial statements in Item 8 of this Annual Report on Form 10-K.

As of February 20, 2009, there were 4,535 holders of record of FMC Technologies' common stock. On February 20, 2009, the last reported sales price of our common stock on the New York Stock Exchange was $26.29.

We have not declared or paid cash dividends in 2008 or 2007, and we do not currently have a plan to pay cash dividends in the future.

On July 18, 2007, we announced that our Board of Directors approved a two-for-one stock split in the form of a stock dividend that was paid on August 31, 2007 to shareholders of record as of August 17, 2007.

In October 2007, we announced the intention to spin-off 100% of our FoodTech and Airport Systems businesses. On July 12, 2008, our Board of Directors approved the spin-off of the businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend to our shareholders. We distributed 0.216 shares of JBT common stock for every share of our stock outstanding as of the close of business on July 22, 2008. We did not retain any shares of JBT common stock.

As of December 31, 2008, our securities authorized for issuance under equity compensation plans were as follows:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans
Equity compensation plans approved by security holders	813,610(1)	$ 10.14	15,769,541(2)
Equity compensations plans not approved by security holders	—	—	—
Total	813,610(1)	$ 10.14	15,769,541(2)

(1) The table includes the number of shares that may be issued upon the exercise of outstanding options to purchase shares of FMC Technologies Common Stock under the Amended and Restated FMC Technologies Incentive Compensation and Stock Plan (the "Plan"). The table does not include shares of restricted stock that have been awarded under the Plan but which have not yet vested.

(2) The table includes shares available for future issuance under the Plan, excluding the shares quantified in the first column. This number includes 2,790,112 shares available for issuance for nonvested stock awards that vest after December 31, 2008.

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We had no unregistered sales of equity securities during the three months ended December 31, 2008. The following table summarizes repurchases of our common stock during the three months ended December 31, 2008.

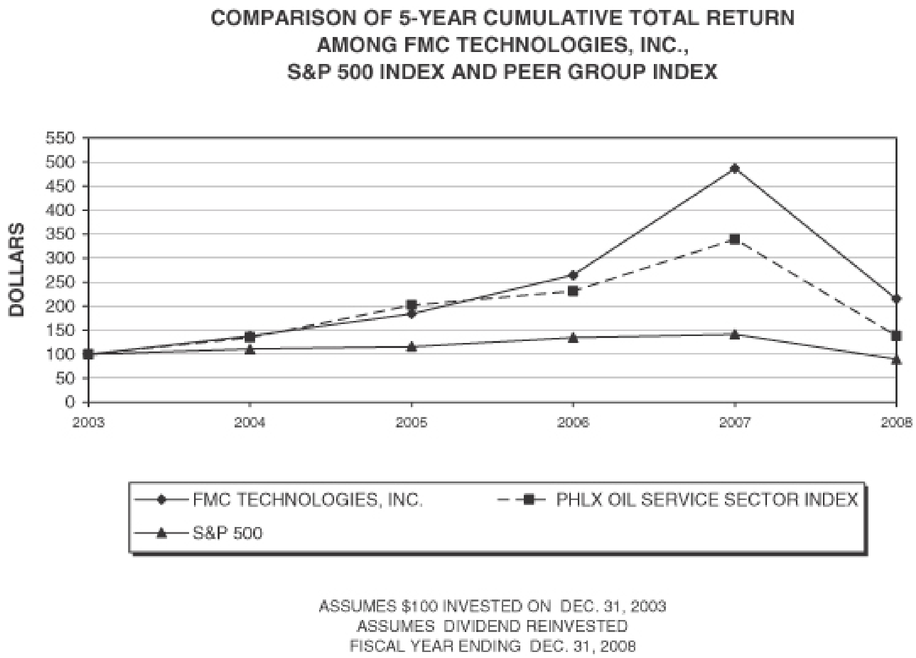
ISSUER PURCHASES OF EQUITY SECURITIES

Period	Total Number of Shares Purchased (a)	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (b) (c)	Maximum Number of Shares that may yet be Purchased under the Plans or Programs (b) (c)
October 1, 2008 – October 31, 2008	3,400	$ 37.46	—	9,684,846
November 1, 2008 – November 30, 2008	19,200	$ 25.62	—	9,684,846
December 1, 2008 – December 31, 2008	3,490	$ 23.34	—	9,684,846
Total	26,090	$ 26.85	—	9,684,846

(a) Represents zero shares of common stock repurchased and held in treasury and 26,090 shares of common stock purchased and held in an employee benefit trust established for the FMC Technologies, Inc. Non-Qualified Savings and Investment Plan. In addition to these shares purchased on the open market, we sold 20,830 shares of registered common stock held in this trust, as directed by the beneficiaries, during the three months ended December 31, 2008.

(b) In 2005, we announced a repurchase plan approved by our Board of Directors authorizing the repurchase of up to two million shares of our outstanding common stock through open market purchases. The Board of Directors has authorized extensions of this program adding five million shares in February 2006 and eight million shares in February 2007 for a total of fifteen million shares of common stock authorized for repurchase. As a result of the two-for-one stock split on August 31, 2007, the authorization was increased to 30 million shares.

(c) On July 12, 2008, the Board of Directors authorized the repurchase of $95.0 million of shares of our outstanding common stock in addition to the maximum number of shares remaining for purchase under our previously authorized plans. We completed the purchase under the $95.0 million authorized plan in September 2008. Total shares of common stock purchased were 1,810,010. These shares have been reflected in the maximum number of shares that may yet be purchased under the plans or programs calculation.



The chart compares the percentage change in the cumulative stockholder return on our common stock against the cumulative total return of the Philadelphia Oil Service Sector Index (OSX) and the S&P Composite 500 Stock Index. The comparison is for a period beginning December 31, 2003 and ending December 31, 2008. The chart assumes the investment of $100 on December 31, 2003 and the reinvestment of all dividends, including the reinvestment of the JBT stock dividend paid to our shareholders.

	2003	2004	2005	2006	2007	2008
FMC TECHNOLOGIES, INC.	$100	$138	$184	$265	$487	$215
OSX	$100	$135	$203	$232	$340	$138
S&P 500	$100	$111	$116	$135	$142	$ 90

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ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected financial data derived from our audited financial statements. Audited financial statements for the years ended December 31, 2008, 2007 and 2006 and as of December 31, 2008 and 2007 are included elsewhere in this report. We have reclassified the results of operations of our FoodTech and Airport Systems businesses and Floating Systems business to income from discontinued operations.

(In millions, except per share data) **Years ended December 31**	**2008**	**2007**	**2006**	**2005**	**2004**
Revenue:					
Energy Production Systems	$3,670.7	$2,882.2	$2,249.5	$1,770.5	$1,270.1
Energy Processing Systems	883.2	767.7	672.3	521.8	493.3
Other revenue (1) and intercompany eliminations	(3.0)	(1.0)	(6.4)	(9.9)	(17.6)
Total revenue	$4,550.9	$3,648.9	$2,915.4	$2,282.4	$1,745.8
Cost of sales (1) (2)	$3,623.1	$2,921.9	$2,370.0	$1,858.5	$1,429.5
Goodwill impairment	—	—	—	—	6.5
Selling, general and administrative expense	351.7	310.6	271.0	228.7	208.8
Research and development expense	45.3	40.8	33.0	29.2	27.5
Total costs and expenses	4,020.1	3,273.3	2,674.0	2,116.4	1,672.3
Other income (expense), net (2)	(23.0)	29.9	(7.0)	(6.3)	3.5
Minority interests	(1.4)	(1.1)	(2.5)	(3.5)	0.1
Income from continuing operations before net interest expense and income taxes	506.4	404.4	231.9	156.2	77.1
Net interest expense	(1.5)	(9.3)	(6.7)	(5.4)	(6.9)
Income from continuing operations before income taxes	504.9	395.1	225.2	150.8	70.2
Provision for income taxes	152.0	134.5	62.7	56.9	8.0
Income from continuing operations	352.9	260.6	162.5	93.9	62.2
Income from discontinued operations, net of income taxes	8.4	42.2	113.8	12.2	54.5
Net income	$ 361.3	$ 302.8	$ 276.3	$ 106.1	$ 116.7

(In millions, except per share data) **Years ended December 31**	**2008**	**2007**	**2006**	**2005**	**2004**
Diluted earnings per share:					
Income from continuing operations	$ 2.72	$ 1.95	$ 1.16	$ 0.66	$ 0.45
Diluted earnings per share	$ 2.78	$ 2.26	$ 1.97	$ 0.75	$ 0.84
Diluted weighted average shares outstanding	129.7	133.8	140.3	141.6	138.6
Common stock price range:					
High	$ 80.86	$ 66.86	$ 35.67	$ 21.89	$ 17.25
Low	$ 20.34	$ 27.76	$ 22.50	$ 14.53	$ 10.99
Cash dividends declared	$ —	$ —	$ —	$ —	$ —

As of December 31	2008	2007	2006	2005	2004
Balance sheet data:					
Total assets	$3,586.3	$3,211.1	$2,487.8	$2,095.6	$1,893.9
Net (debt) cash (3)	$ (154.9)	$ 0.2	$ (138.9)	$ (103.0)	$ (39.0)
Long-term debt, less current portion	$ 472.0	$ 112.2	$ 212.6	$ 252.6	$ 160.4
Stockholders' equity	$ 696.5	$1,021.7	$ 886.0	$ 699.5	$ 662.2

Years ended December 31	2008	2007	2006	2005	2004
Other financial information:					
Capital expenditures	$ 165.0	$ 179.6	$ 115.6	$ 69.9	$ 26.9
Cash flows provided by operating activities of continuing operations	$ 261.7	$ 542.8	$ 51.7	$ (79.0)	$ 167.6
Segment operating capital employed (4)	$1,160.1	$ 920.6	$ 964.6	$ 657.5	$ 484.7
Order backlog (5)	$3,651.2	$4,490.7	$2,332.0	$1,662.4	$1,270.4

(1) We classified unrealized gains related to unexecuted sales contracts of $7.4 million for the year ended December 31, 2007 from cost of sales to revenue on the consolidated statements of income.

(2) We reclassified net discontinued gains on the disposal of assets of $1.1 million for the year ended December 31, 2006 from cost of sales to other income (expense), net on the consolidated statements of income.

(3) Net (debt) cash consists of short-term debt, long-term debt and the current portion of long-term debt less cash and cash equivalents. Net (debt) cash is a non-GAAP measure that management uses to evaluate our capital structure and financial leverage. See Liquidity and Capital Resources in Management's Discussion and Analysis of Financial Condition and Results of Operations for additional discussion of net (debt) cash.

(4) We view segment operating capital employed, which consists of assets, net of liabilities, as the primary measure of segment capital. Segment operating capital employed excludes corporate debt facilities and certain investments, pension liabilities, deferred and currently payable income taxes and LIFO inventory reserves.

(5) Order backlog is calculated as the estimated sales value of unfilled, confirmed customer orders at the reporting date.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Cautionary Note Regarding Forward-Looking Statements

Statement under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995: FMC Technologies, Inc. and its representatives may from time to time make written or oral statements that are "forward-looking" and provide information that is not historical in nature, including statements that are or will be contained in this report, the notes to our consolidated financial statements, our other filings with the Securities and Exchange Commission, our press releases and conference call presentations and our other communications to our stockholders. These statements involve known and unknown risks, uncertainties and other factors that may be outside of our control and may cause actual results to differ materially from any results, levels of activity, performance or achievements expressed or implied by any forward-looking statement. These factors include, among other things, those described under Risk Factors in Item 1A of this Annual Report on Form 10-K.

In some cases, forward-looking statements can be identified by such words or phrases as "will likely result," "is confident that," "expects," "should," "could," "may," "will continue to," "believes," "anticipates," "predicts," "forecasts," "estimates," "projects," "potential," "intends" or similar expressions identifying "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995, including the negative of those words and phrases. Such forward-looking statements are based on our current views and assumptions regarding future events, future business conditions and our outlook based on currently available information. We wish to caution you not to place undue reliance on any such forward-looking statements, which speak only as of the date made and involve judgments.

Executive Overview

We design, manufacture and service sophisticated machinery and systems for customers in the energy industry. We have manufacturing operations worldwide strategically located to facilitate delivery of our products and services to our customers. Our operations are aggregated into two reportable segments: Energy Production Systems and Energy Processing Systems. We focus on economic and industry-specific drivers and key risk factors affecting our business segments as we formulate our strategic plans and make decisions related to allocating capital and human resources. The following discussion provides examples of the kinds of economic and industry factors and key risks that we consider.

The results of our businesses are primarily driven by changes in exploration and production spending by oil and gas companies, which in part depend upon current and anticipated future crude oil and natural gas demand, production volumes, and consequently prices. Our Energy Production Systems business is affected by trends in land and offshore oil and natural gas production, including shallow and deepwater development. Our Energy Processing Systems business results reflect spending by oilfield service companies and engineering construction companies for equipment and systems that facilitate the flow, measurement and transportation of crude oil and natural gas. We use crude oil and natural gas prices as an indicator of demand. In the past year, oil and natural gas prices reached all-time highs, creating incentives for increased investment by exploration and production companies in the energy industry. Crude oil and natural gas prices have receded from their high levels due to, among other factors, contraction in global energy demand and consequently production volume is declining to match demand. The level of production activity worldwide influences spending decisions, and we use rig count as an additional indicator of demand.

We also focus on key risk factors when determining our overall strategy and making decisions for allocating capital. These factors include risks associated with the global economic outlook, product obsolescence, and the competitive environment. We address these risks in our business strategies, which incorporate continuing development of leading edge technologies, cultivating strong customer relationships, and growing our energy business.

In 2008 we expanded our portfolio of technology offerings through the purchase of a 45% interest in Schilling Robotics, LLC (“Schilling”) and further positioned the company for future growth. Schilling is a California-based manufacturer of remotely operated vehicles (ROVs), manipulator systems and other high-technology equipment used in subsea oil and gas exploration.

We have developed close working relationships with our customers in our business segments. Our Energy Production Systems business results reflect our ability to build long-term alliances with oil and natural gas companies that are actively engaged in offshore deepwater development, and provide solutions to their needs in a timely and cost-effective manner. We have formed similar collaborative relationships with oilfield service companies in Energy Processing Systems. We believe that by working closely with our customers we enhance our competitive advantage, strengthen our market positions and improve our results.

In October 2007, we announced the intention to spin-off 100% of our FoodTech and Airport Systems businesses. On July 12, 2008, our Board of Directors approved the spin-off of the businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend to our shareholders. We distributed 0.216 shares of JBT common stock for every share of our stock outstanding as of the close of business on July 22, 2008. We did not retain any shares of JBT common stock. JBT is now an independent public company traded on the New York Stock Exchange (symbol JBT). The results of JBT have been reported as discontinued operations for all periods presented.

Prior to the spin-off, we received necessary regulatory approvals, including a private letter ruling from the IRS regarding the tax-free status of the transaction for U.S. federal income tax purposes and a declaration of effectiveness from the SEC for JBT’s registration statement on Form 10. For additional information related to the spin-off of JBT, see Note 3 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

As we evaluate our operating results, we view our business segments by product line and consider performance indicators like segment revenues, operating profit and capital employed, in addition to the level of inbound orders and order backlog. A significant and growing proportion of our revenues are recognized under the percentage of completion method of accounting. Our payments for such arrangements are generally received according to milestones achieved under stated contract terms. Consequently, the timing of revenue recognition is not always highly correlated with the timing of customer payments. We may structure our contracts to receive advance payments which we may use to fund engineering efforts and inventory purchases. Working capital (excluding cash) and net debt are therefore key performance indicators of cash flows.

In our segments, we serve customers from around the world. During 2008, approximately 76% of our total sales were to non-U.S. locations. We evaluate international markets and pursue opportunities that fit our technological capabilities and strategies. For example, we have targeted opportunities in West Africa, Brazil and the Asia Pacific region because of the expected offshore drilling potential in those regions.

CONSOLIDATED RESULTS OF OPERATIONS
YEARS ENDED DECEMBER 31, 2008, 2007 and 2006

	Year Ended December 31,			Change			
($ in millions)	2008	2007	2006	2008 vs. 2007		2007 vs. 2006	
Revenue	$4,550.9	$3,648.9	$2,915.4	$902.0	25%	$733.5	25%
Costs and expenses:							
Cost of sales	3,623.1	2,921.9	2,370.0	701.2	24	551.9	23
Selling, general and administrative expense	351.7	310.6	271.0	41.1	13	39.6	15
Research and development expense	45.3	40.8	33.0	4.5	11	7.8	24
Total costs and expenses	4,020.1	3,273.3	2,674.0	746.8	23	599.3	22
Other income (expense), net	(23.0)	29.9	(7.0)	(52.9)	*	36.9	*
Minority interests	(1.4)	(1.1)	(2.5)	(0.3)	27	1.4	56
Net interest expense	(1.5)	(9.3)	(6.7)	7.8	84	(2.6)	39
Income before income taxes	504.9	395.1	225.2	109.8	28	169.9	75
Provision for income taxes	152.0	134.5	62.7	17.5	13	71.8	115
Income from continuing operations	352.9	260.6	162.5	92.3	35	98.1	60
Income from discontinued operations, net of income taxes	8.4	42.2	113.8	(33.8)	*	(71.6)	*
Net income	$ 361.3	$ 302.8	$ 276.3	$ 58.5	19%	$ 26.5	10%

* Not meaningful

2008 Compared With 2007

Our total revenue for the year ended December 31, 2008 reflects growth in both business segments compared to the prior year. Our Energy Production Systems businesses provided $788.5 million of the $902.0 million increase. We benefited from high demand for equipment and systems during 2007, especially subsea systems, used in major oil and gas producing regions throughout the world. The favorable market conditions during 2007 produced a strong backlog position at December 31, 2007 and subsequently, higher revenues for the year ended December 31, 2008 compared to the year ended December 31, 2007. Energy Processing Systems revenues grew by $115.5 million from the prior year primarily reflecting continued infrastructure investment related to metering systems and coal-fired power generation.

Gross profit (revenue less cost of sales) increased $200.8 million, and as a percentage of sales from 19.9% in 2007 to 20.4% in 2008. The increase was primarily attributable to higher sales volume and to a lesser extent, higher margins in our Energy Production businesses, reflecting more complex subsea projects.

Selling, general and administrative ("SG&A") expense for 2008 increased compared to 2007 but declined as a percentage of sales from 8.5% in 2007 to 7.7% in 2008 as we continue to leverage our SG&A spending. The majority of our increased SG&A spending in 2008 was for Energy Production Systems relating to increased sales volumes.

We increased our research and development activities in 2008 as we advance new technologies pertaining to subsea processing capabilities.

Other income (expense), net, reflected non-operating losses of $15.7 million and gains of $27.9 million on foreign currency derivative instruments, for which hedge accounting is not applied, for the years ended December 31, 2008 and 2007, respectively. Additionally, we had $7.3 million in compensation expense during the 2008 year associated with investments held in an employee benefit trust for our non-qualified deferred compensation plan. Further discussion of our derivative instruments is incorporated herein by reference from Note 14 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

Net interest expense was lower in 2008, reflective of lower average debt levels and lower borrowing costs during 2008.

Our provision for income taxes reflected an effective tax rate of 30.1% in 2008. In 2007, our effective tax rate was 34.0%. The decrease in the effective rate in 2008 is primarily related to country mix of earnings. The difference between the effective tax rate and the statutory U.S. federal income tax related primarily to differing foreign and state tax rates.

Discontinued Operations

Income from discontinued operations, net of income taxes, for the year ended December 31, 2008 primarily reflects $25.7 million, net of tax, in operating results of JBT for the seven months ended July 31, 2008, partially offset by $17.8 million, net of tax, of expenses related to the spin-off of JBT. These expenses consist primarily of non-deductible legal, accounting and professional fees to complete the spin-off.

Outlook for 2009

We estimate that our full-year 2009 diluted earnings per share will be within the range of $2.40 to $2.65. The section entitled "Operating Results of Business Segments" provides further discussion of our 2009 outlook.

2007 Compared With 2006

Our total revenue in 2007 reflects double-digit percentage growth over 2006 in both of our business segments. Energy Production Systems generated the highest dollar increase of $632.7 million and the highest growth rate of 28%. We entered the year with a large backlog resulting from high demand for equipment and systems in 2005 and 2006, especially subsea systems, used in the major oil and gas producing regions throughout the world. During 2007, oil and gas prices remained high relative to historical levels, and land-based drilling activity was stable, which created incentives for investment in the energy industry creating higher demand for our energy systems and services.

Gross profit (revenue less cost of sales) increased $181.6 million, and as a percentage of sales from 18.7% in 2006 to 19.9% in 2007. Higher profits were primarily attributable to higher sales volume of $164.8 million and higher margin in our Energy Production businesses, reflecting more complex subsea projects.

SG&A expense for 2007 increased compared to 2006 but declined as a percentage of sales from 9.3% in 2006 to 8.5% in 2007 as we continue to leverage our SG&A spending. The majority of our increased SG&A spending in 2007 was for Energy Production Systems relating to improved sales volumes.

We increased our research and development activities in 2007 as we advance new technologies pertaining to subsea processing capabilities.

Other income (expense), net, primarily reflected non-operating gains and losses including gains on foreign currency derivative instruments, for which hedge accounting is not applied, and to a lesser extent, gains and losses on assets disposals. Further discussion of our derivative instruments is incorporated herein by reference from Note 14 to our consolidated financial statements included in Item 8 of this Annual Report on Form 10-K.

Net interest expense was higher in 2007, reflective of higher debt levels on average during 2007.

Our provision for income taxes reflected an effective tax rate of 34.0% in 2007. In 2006, our effective tax rate was 27.8%. The increase in the effective tax rate is primarily attributable to the reversal in 2006 of a $12.2 million valuation allowance on deferred tax assets related to our Brazilian operations.

Discontinued Operations

Income from discontinued operations, net of income taxes, for the year ended December 31, 2007, primarily reflects $39.1 million, net of tax, in operating results of JBT, and a $3.1 million gain, net of tax, on the sale of one of the FoodTech product lines. In 2006, our net income from discontinued operations, net of tax, reflected the operating results of JBT and a gain of $34.8 million, net of tax, on the sale of our Floating Systems business. In addition, we generated profits from the Floating Systems business during 2006, including $15.0 million, or $9.2 million, net of tax, on the favorable resolution of claims on a large contract.

Operating Results of Business Segments

Segment operating profit is defined as total segment revenue less segment operating expenses. The following items have been excluded in computing segment operating profit: corporate staff expense, interest income and expense associated with corporate debt facilities and investments, income taxes and other expense, net.

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The following table summarizes our operating results for the years ended December 31, 2008, 2007 and 2006:

($ in millions)	Year Ended December 31, 2008	2007	2006	Favorable/(Unfavorable) 2008 vs. 2007		2007 vs. 2006	
Revenue							
Energy Production Systems	$3,670.7	$2,882.2	$2,249.5	$788.5	27%	$632.7	28%
Energy Processing Systems	883.2	767.7	672.3	115.5	15	95.4	14
Other revenue and intercompany eliminations	(3.0)	(1.0)	(6.4)	(2.0)	*	5.4	*
Total revenue	$4,550.9	$3,648.9	$2,915.4	$902.0	25%	$733.5	25%
Net income							
Segment operating profit							
Energy Production Systems	$ 420.7	$ 287.9	$ 191.2	$132.8	46%	$ 96.7	51%
Energy Processing Systems	165.5	142.5	100.9	23.0	16	41.6	41
Total segment operating profit	586.2	430.4	292.1	155.8	36	138.3	47
Corporate items:							
Corporate expense	(37.5)	(35.1)	(32.9)	(2.4)	(7)	(2.2)	(7)
Other revenue and other (expense), net	(42.3)	9.1	(27.3)	(51.4)	*	36.4	*
Net interest expense	(1.5)	(9.3)	(6.7)	7.8	84	(2.6)	(39)
Total corporate items	(81.3)	(35.3)	(66.9)	(46.0)	(130)	31.6	47
Income before income taxes	504.9	395.1	225.2	109.8	28	169.9	75
Provision for income taxes	152.0	134.5	62.7	(17.5)	(13)	(71.8)	(115)
Income from continuing operations	352.9	260.6	162.5	92.3	35	98.1	60
Income from discontinued operations, net of income taxes	8.4	42.2	113.8	(33.8)	*	(71.6)	*
Net income	$ 361.3	$ 302.8	$ 276.3	$ 58.5	19%	$ 26.5	10%

* Not meaningful

We report our results of operations in U.S. dollars; however, our earnings are generated in a number of currencies worldwide. We generate a significant amount of revenues, and incur a significant amount of costs, in Norwegian Krone, Brazilian Real, and the Euro, for example. The earnings of subsidiaries functioning in their local currencies are translated into U.S. dollars based upon the average exchange rate for the period, in order to provide worldwide consolidated results. While the U.S. dollar results reported reflect the actual economics of the period reported upon, the variances from prior periods include the impact of translating earnings at different rates.

A summary of the translation impact on our consolidated results follows:

(In millions)	Year ended December 31, 2008	Year ended December 31, 2007
Revenue growth:		
Reported	$ 902.0	$ 733.5
Due to translation	$ 92.4	$ 225.8
Segment operating profit growth:		
Reported	$ 155.8	$ 138.3
Due to translation	$ 15.3	$ 17.9

The revenue impacts are primarily reflected in Energy Production Systems—87% and 93% for the years ended December 31, 2008 and 2007, respectively. The operating profit impacts are primarily reflected in Energy Production Systems—84% and 95% for the years ended December 31, 2008 and 2007, respectively. There was no material effect of translation on our comparative results of 2006.

Energy Production Systems

2008 Compared With 2007

Energy Production Systems' revenue was $788.5 million higher for the year ended December 31, 2008 compared to the same period in 2007, which includes approximately $80.5 million related to foreign currency translation. Segment revenue is affected by trends in land and offshore oil and gas exploration and production, including shallow and deepwater development. Higher demand for our products and services in prior periods has resulted in increased project related subsea systems revenue of $3.0 billion for the year ended December 31, 2008 compared to $2.3 billion for the comparable period in 2007. Subsea volumes increased primarily as a result of progress on new and ongoing projects worldwide; notably projects located in the North Sea, in the Gulf of Mexico and offshore Brazil.

Energy Production Systems' operating profit increased by $132.8 million for the year ended 2008 compared to the same period in 2007, which includes approximately $12.9 million related to foreign currency translation. The increase in sales volume accounted for $120.8 million of the profit increase. We achieved approximately $55.1 million in other margin improvements primarily reflective of more complex, and higher margin, subsea projects. Offsetting these profit increases were $38.9 million in increased selling, general and administrative costs resulting from higher staff levels, and $3.4 million in higher costs for research and development of our subsea and surface technologies.

Outlook for 2009

We expect growth in operating profit for Energy Production Systems in 2009 primarily driven by the execution of our backlog of more complex, and higher margin, subsea projects. Inbound orders in 2009 may be negatively impacted by global economic conditions as well as lower oil and gas prices.

2007 Compared With 2006

Energy Production Systems' revenue was $632.7 million higher for the year ended December 31, 2007 compared to the same period in 2006, which includes approximately $200 million related to foreign currency translation. Segment revenue is affected by trends in land and offshore oil and gas exploration and production. Our revenue growth was driven by the trend toward deepwater development. During the year ended December 31, 2007, higher natural gas and crude oil prices created an incentive for increased exploration and production of these commodities thereby driving higher demand for our products and services. Subsea systems' revenue of $2.3 billion increased by $487.4 million in 2007 compared to the same period in 2006. Subsea volumes increased primarily as a result of progress on new and ongoing projects worldwide; notably projects located offshore West Africa, the North Sea, in the Gulf of Mexico and offshore Brazil.

Energy Production Systems' segment operating profit increased by $96.7 million in 2007 compared to the same period in 2006, which includes approximately $17.0 million related to foreign currency translation. The increase in sales volume accounted for $103.5 million of the profit increase. We achieved approximately $23.3 million in other margin improvements primarily reflective of more complex, and higher margin, subsea projects. Offsetting these profit increases were $25.0 million in increased selling, general and administrative costs, mostly higher staff levels, and $8.0 million in higher costs for research and development of our subsea technologies.

Energy Processing Systems

2008 Compared With 2007

Energy Processing Systems' revenue increased $115.5 million for the year ended December 31, 2008 compared to the year ended December 31, 2007. The increase was driven primarily by higher volume in the Measurement Solutions and Material Handling businesses, reflecting continued infrastructure investment related to metering systems and coal-fired power generation.

Energy Processing Systems' operating profit for the year ended December 31, 2008 increased $23.0 million compared to the same period of 2007. Higher product sales volumes contributed $34.5 million of increased operating profit, primarily in the Measurement Solutions and Material Handling businesses, partially offset by an unfavorable product mix, increased headcount related selling and administrative costs, higher commission expense and higher research and development spending in support of improved sales volume.

Outlook for 2009

We expect 2009 to reflect lower revenues and operating profits resulting from declines in oil and gas prices, land based rig count, an uncertain worldwide economic environment and weak credit markets.

2007 Compared With 2006

Energy Processing Systems' revenue increased $95.4 million in 2007 compared to 2006. Energy demand continued to rise in 2007 driving higher oil and gas prices and sustained land-based drilling and fracturing activity. This resulted in higher demand for our fluid control products and our measurement custody transfer products and systems.

Energy Processing Systems' 2007 operating profit increased $41.6 million compared to 2006. Higher volume drove an increase in profits of $33.1 million. Cost reduction efforts and our ability to leverage higher sales volumes led to improved product costs in most of our business units, contributing $9.9 million in increased profits. These savings were partially offset by higher selling, general and administrative costs including higher staff levels and increased commission expense.

Corporate Items

2008 Compared With 2007

Our corporate items reduced earnings by $81.3 million in 2008 compared to $35.3 million in 2007. The increase in expense in 2008 primarily reflects mark-to-market losses on foreign currency forward contracts of $8.7 million in 2008 compared to gains in the prior year of $30.9 million, combined with increased stock-based compensation of $6.5 million and other corporate staff costs of $2.4 million. These costs were partially offset by a $7.8 million decrease in interest expense attributable to reduced borrowing levels and lower interest rates in 2008.

2007 Compared With 2006

Our corporate items reduced earnings by $35.3 million in 2007 compared to $66.9 million in 2006. The decrease in expense in 2007 reflects mark-to-market gains on foreign currency forward contracts of $30.9 million in 2007 compared to losses in the prior year of $9.1 million. Partially offsetting these earnings were higher stock-based compensation of $4.1 million and other corporate staff costs of $2.2 million.

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Inbound Orders and Order Backlog

Inbound orders represent the estimated sales value of confirmed customer orders received during the reporting period and the impact of translation on the previous year's backlog. Backlog translation negatively affected orders by $593.1 million in the year ended December 31, 2008 and positively affected orders by $290.2 million in the comparable period of 2007.

	Inbound Orders Year Ended December 31,	
(In millions)	**2008**	**2007**
Energy Production Systems	$2,853.2	$5,017.0
Energy Processing Systems	865.9	792.3
Intercompany eliminations	(7.6)	(1.7)
Total inbound orders	$3,711.5	$5,807.6

Order backlog is calculated as the estimated sales value of unfilled, confirmed customer orders at the reporting date.

	Order Backlog December 31,	
(In millions)	**2008**	**2007**
Energy Production Systems	$3,345.0	$4,162.5
Energy Processing Systems	313.2	330.5
Intercompany eliminations	(7.0)	(2.3)
Total order backlog	$3,651.2	$4,490.7

Energy Productions Systems' order backlog at December 31, 2008 declined by $817.5 million compared to the prior year period, due primarily to the impact of foreign currency translation. The 2007 backlog included the following significant subsea projects: Total Pazflor, StatoilHydro Ormen Lange Phase II and Vega, Woodside Pluto, Shell Gumusut and Petrobras Cascade and Mexilhao. Backlog of $3.3 billion at December 31, 2008 includes the same projects mentioned above plus orders from BP for its Block 18 field, StatoilHydro for its Heidrun North project, as well as additional tree sales for existing projects. We expect to convert approximately 70% of backlog into revenue during 2009.

Energy Processing Systems' order backlog at December 31, 2008 decreased 5% compared to December 31, 2007, primarily due to the timing of completion on several significant projects and decreased demand for fluid control, material handling and measurement products and services resulting from the deterioration of oil and gas prices, weak credit markets and an uncertain economic outlook. We expect to convert approximately 84% of the December 31, 2008 backlog into revenue during 2009.

Liquidity and Capital Resources

We generate our capital resources primarily through operations and, when needed, through various credit facilities.

Our net debt at December 31, 2008 was $154.9 million, compared with net cash of $0.2 million at December 31, 2007. Net debt, or net cash, is a non-GAAP measure reflecting debt, net of cash and cash equivalents. Management uses this non-GAAP measure to evaluate our capital structure and financial leverage. We believe that net debt, or net cash, is a meaningful measure which will assist investors in understanding our results and recognizing underlying trends. This measure supplements disclosures required by GAAP. The following table provides details of the balance sheet classifications included in net debt.

(In millions)	December 31, 2008	December 31, 2007
Cash and cash equivalents	$ 340.1	$ 129.5
Short-term debt and current portion of long-term debt	(23.0)	(7.2)
Long-term debt, less current portion	(472.0)	(112.2)
Related party note payable	—	(9.9)
Net (debt) cash	$ (154.9)	$ 0.2

The increase in net debt during 2008 was due primarily to repurchases of our common stock, funding for capital expansion and the acquisition of a 45% interest in Schilling, partially offset by the cash dividend received from JBT in connection with the spin-off and cash generated from operating activities.

Cash flows for each of the years in the three-year period ended December 31, 2008, were as follows:

	Year Ended December 31,		
(In millions)	2008	2007	2006
Cash provided by operating activities of continuing operations	$ 261.7	$ 542.8	$ 51.7
Cash required by investing activities of continuing operations	(282.9)	(181.0)	(122.2)
Cash provided (required) by financing activities	252.7	(355.6)	(141.8)
Cash provided (required) by discontinued operations	(15.8)	29.0	136.1
Effect of exchange rate changes on cash and cash equivalents	(5.1)	14.8	2.8
Increase (decrease) in cash and cash equivalents	$ 210.6	$ 50.0	$ (73.4)

Operating Cash Flows

During the year ended December 31, 2008, we generated $261.7 million in cash flows from operating activities of continuing operations, which represented a $281.1 million decrease compared to the prior year. Cash outflows for working capital in 2008 were approximately $85.0 million compared to a net cash inflow of approximately $234.0 million in 2007. Higher investments in working capital were due primarily to the required investment in accounts receivable and inventory in the Energy Production segment. Our working capital balances can vary significantly quarter to quarter depending on the payment terms and timing of delivery on key contracts. The increased investment in working capital was partially offset by the increase in income from continuing operations. Our cash flows from operating activities in 2007 were $491.1 million higher than the prior year. The increase is primarily attributable to the improvements in utilization of working capital.

Investing Cash Flows

Our cash requirements for investing activities of continuing operations in the year ended December 31, 2008 increased by $101.9 million compared to 2007. We spent $121.3 million on minority ownership positions and other investments during 2008, including $106.0 million for a 45% interest in Schilling. During 2007 we spent $64.4 million on acquisitions, including the $59.7 million purchase of the remaining minority interest in CDS Engineering BV ("CDS"). The investments were partially offset by a decrease in capital expenditures of $14.6 million in 2008 compared to 2007 primarily as a result of lower spending on subsea capacity additions and offshore tooling and intervention assets. Additionally we had $3.4 million in proceeds from the disposal of assets in 2008 compared to $63.0 million in 2007. In 2007 we sold and leased back land and property in Houston, Texas.

Cash required by investing activities in 2006 was $122.2 million primarily reflecting ongoing investment in new production facilities worldwide, primarily associated with increasing subsea and surface wellhead capacity.

Financing Cash Flows

Cash provided by financing activities was $252.7 million for the year ended December 31, 2008 compared to cash required of $355.6 million for the same period in 2007. We received proceeds from JBT of $196.2 million during 2008 in conjunction with the spin-off of JBT. Additionally, in 2008 we had net proceeds from borrowings of $369.4 million used to fund share repurchases and a portion of the investment in Schilling compared to the reduction of net borrowings of $98.4 million in 2007. We repurchased 5.7 million of our outstanding common stock for $324.0 million under our 30 million and $95.0 million share repurchase authorizations, an increase of $36.6 million in repurchases from 2007. In 2006, cash required by financing activities was primarily for the repurchase of $142.5 million in stock repurchases and the reduction in net borrowings of $38.1 million.

Discontinued Operations Cash Flows

Cash required by and provided by discontinued operations in 2008 and 2007, respectively, primarily reflected the operating and investing activities of JBT. Cash provided in 2006 primarily reflected the operating and investing activities of JBT, and to a lesser extent, the proceeds on the sale of Floating Systems in December 2006.

Debt and Liquidity

Total borrowings at December 31, 2008 and 2007, comprised the following:

(In millions)	December 31, 2008	2007
Revolving credit facilities	$407.0	$ —
Commercial paper	52.0	103.0
Related party note payable	—	9.9
Uncommitted credit facilities	19.1	6.8
Property financing	8.5	8.9
Other	8.4	0.7
Total borrowings	$495.0	$ 129.3

The following is a summary of our credit facilities at December 31, 2008:

(In millions) Description	Commitment amount	Debt outstanding	Commercial paper outstanding (a)	Letters of credit	Unused capacity	Maturity
Five-year revolving credit facility	$ 600.0	$ 407.0	$ 52.0	$26.9	$114.1	December 2012
One-year revolving credit facility	5.0	—	—	—	5.0	December 2009
	$ 605.0	$ 407.0	$ 52.0	$26.9	$119.1	

(a) Under our commercial paper program, we have the ability to access up to $500.0 million of short-term financing through our commercial paper dealers. Our available capacity under our $600 million five-year revolving credit facility is reduced by any outstanding commercial paper.

Committed credit available under our five-year revolving credit facility maturing in December 2012 provides the ability to issue our commercial paper obligations on a long-term basis. Therefore, at December 31, 2008, as we have both the ability and intent to refinance these obligations on a long-term basis, our commercial paper borrowings were classified as long-term on the consolidated balance sheets.

In December 2007, we entered into a $600 million five-year revolving credit agreement maturing in December 2012 with JPMorgan Chase Bank, N.A., as Administrative Agent. Borrowings under the credit agreement accrue interest at a rate equal to, at our option; either (a) a base rate determined by reference to the higher of (1) the agent's prime rate and (2) the federal funds rate plus 1/2 of 1% or (b) an interest rate of 45 basis points above the London Interbank Offered Rate ("LIBOR"). The margin over LIBOR is variable and is determined based on our debt rating. Among other restrictions, the terms of the credit agreement include negative covenants related to liens and a financial covenant related to the debt to earnings ratio. We are in compliance with all restrictive covenants as of December 31, 2008.

Outlook for 2009

Historically, we have generated our capital resources primarily through operations and, when needed, through credit facilities. In 2008, we witnessed volatility in the credit, equity and commodity markets. While this creates some degree of uncertainty for our business, management believes we have secured sufficient credit capacity to mitigate potential negative impacts on our operations. We expect to continue to meet our cash requirements with a combination of cash on hand, cash generated from operations and our credit facilities.

We are projecting to spend approximately $120.0 million during 2009 for capital expenditures primarily for improvements to our manufacturing and service capabilities and expansion of our well intervention capabilities. We anticipate contributing approximately $34.7 million to our pension plans in 2009. Further, we expect to continue our stock repurchases authorized by our Board, with the timing and amounts of these repurchases dependent upon market conditions and liquidity.

On January 13, 2009, we entered into a $350 million 364-day revolving credit agreement with Bank of America, N.A., as Administrative Agent. The new facility matures in January 2010. We now have combined committed bank lines of $950 million that we expect to utilize if working capital temporarily increases in response to market demand, and when opportunities for business acquisitions or mergers meet our standards. We continue to evaluate acquisitions, divestitures and joint ventures in the ordinary course of business.

Contractual Obligations and Off-Balance Sheet Arrangements

The following is a summary of our contractual obligations at December 31, 2008:

	Payments due by period				
(In millions) **Contractual obligations**	**Total payments**	**Less than 1 year**	**1-3 years**	**3 -5 years**	**After 5 years**
Long-term debt (a)	$ 475.9	$ 3.9	$ 5.2	$460.1	$ 6.7
Short-term debt	19.1	19.1	—	—	—
Operating leases	239.6	37.0	61.1	42.8	98.7
Unconditional purchase obligations (b)	621.9	351.4	270.5	—	—
Pension and other postretirement benefits (c)	34.7	34.7	—	—	—
Unrecognized tax benefits (d)	4.2	4.2	—	—	—
Total contractual obligations	$1,395.4	$ 450.3	$336.8	$502.9	$105.4

(a) Our available long-term debt is dependent upon our compliance with covenants, including negative covenants related to liens, and a financial covenant related to the debt to earnings ratio. Any violation of covenants or other events of default, which are not waived or cured, or changes in our credit rating could have a material impact on our ability to maintain our committed financing arrangements.

Interest on long-term debt is not included in the table. As of December 31, 2008, we have commercial paper borrowings with short-term maturities that we expect to refinance beyond 2009. However, we are uncertain as to the level of commercial paper or other borrowings and market interest rates that will be applicable throughout 2009. During 2008, we paid $9.4 million for interest expense.

(b) In the normal course of business, we enter into agreements with our suppliers to purchase raw materials or services. These agreements include a requirement that our supplier provide products or services to our specifications and require us to make a firm purchase commitment to our supplier. As substantially all of these commitments are associated with purchases made to fulfill our customers' orders, the costs associated with these agreements will ultimately be reflected in cost of sales on our consolidated statements of income.

(c) We expect to make $34.7 million in contributions to our pension and other postretirement benefit plans during 2009. This amount does not include discretionary contributions to our U.S. qualified pension plan. Required contributions for future years depend on factors that cannot be determined at this time.

(d) As of December 31, 2008, we have a liability for unrecognized tax benefits of $31.0 million. Of this amount, we expect to make payments of $4.2 million during 2009 to settle a portion of these liabilities, and this amount is reflected in income taxes payable in our consolidated balance sheet as of December 31, 2008. Due to the high degree of uncertainty regarding the timing of potential future cash flows associated with the remaining $26.8 million in liabilities, we are unable to make a reasonable estimate of the period in which such liabilities might be paid.

The following is a summary of other off-balance sheet arrangements at December 31, 2008:

(In millions)	Amount of commitment expiration per period				
Other off-balance sheet arrangements	**Total amount**	**Less than 1 year**	**1-3 years**	**3-5 years**	**After 5 years**
Letters of credit and bank guarantees	$613.1	$ 226.4	$194.4	$100.0	$92.3
Surety bonds	170.3	141.1	29.2	—	—
Total other off-balance sheet arrangements	$783.4	$ 367.5	$223.6	$100.0	$92.3

As collateral for our performance on certain sales contracts or as part of our agreements with insurance companies, we are contingently liable under letters of credit, surety bonds and other bank guarantees. In order to obtain these financial instruments, we pay fees to various financial institutions in amounts competitively determined in the marketplace. Our ability to generate revenue from certain contracts is dependent upon our ability to obtain these off-balance sheet financial instruments. These off-balance sheet financial instruments may be renewed, revised or released based on changes in the underlying commitment. Historically, our commercial commitments have not been drawn upon to a material extent; consequently, management believes it is not likely that there will be claims against these commitments that will have a negative impact on our key financial ratios or our ability to obtain financing.

In connection with the spin-off of JBT, we retained liability for various contingent obligations totaling $131.5 million at December 31, 2008. Contingent obligations include guarantees on certain performance bonds issued by JBT. We are fully indemnified by JBT pursuant to the terms and conditions of the Separation and Distribution Agreement, dated July 31, 2008, between FMC Technologies and JBT. Management does not expect any of these financial instruments to result in losses that if incurred, would have a material effect on our consolidated financial position, results of operations or cash flows. The majority of these obligations will expire before the end of 2010.

Qualitative and Quantitative Disclosures about Market Risk

We are subject to financial market risks, including fluctuations in foreign currency exchange rates and interest rates. In order to manage and mitigate our exposure to these risks, we may use derivative financial instruments in accordance with established policies and procedures. We do not use derivative financial instruments where the objective is to generate profits solely from trading activities. At December 31, 2008 and 2007, our derivative holdings consisted of foreign currency forward contracts and foreign currency instruments embedded in purchase and sale contracts. At December 31, 2007, our derivative holdings also consisted of interest rate swap agreements.

These forward-looking disclosures only address potential impacts from market risks as they affect our financial instruments. They do not include other potential effects which could impact our business as a result of changes in foreign currency exchange rates, interest rates, commodity prices or equity prices.

Foreign Currency Exchange Rate Risk

When we sell or purchase products or services, transactions are frequently denominated in currencies other than an operation's functional currency. When foreign currency exposures exist we may enter into foreign exchange forward instruments with third parties. Our hedging policy reduces, but does not entirely eliminate, the impact of foreign currency exchange rate movements. We expect any gains or losses in the hedging portfolio to be substantially offset by a corresponding gain or loss in the underlying exposure being hedged.

We hedge our net recognized foreign currency assets and liabilities to reduce the risk that our earnings and cash flows will be adversely affected by fluctuations in foreign currency exchange rates. We also hedge firmly committed anticipated transactions in the normal course of business. The majority of these hedging instruments mature during 2009.

In certain circumstances we enter into purchase and sales contracts which contain payment terms in foreign currencies. This may occur, for instance, to offset the cost of equipment or services payable in the same currency. Contractual payments required in a currency that is not the functional or local currency of substantial parties to the contract are embedded derivatives.

We use a sensitivity analysis to measure the impact on derivative instrument fair values of an immediate 10% adverse movement in the foreign currency exchange rates. This calculation assumes that each exchange rate would change in the same direction relative to the U.S. dollar and all other variables are held constant. We expect that changes in the fair value of derivative instruments will offset the changes in fair value of the underlying assets and liabilities on the balance sheet. To the extent that our derivative instruments are hedging anticipated transactions, a 10% decrease in the value of the hedged currency would result in a decrease of approximately $11.5 million in the net fair value of derivative financial instruments reflected on our balance sheet at December 31, 2008. Changes in the derivative fair value will not have an immediate impact on our results of operations unless these contracts are deemed to be ineffective.

Interest Rate Risk

Our debt instruments subject us to market risk associated with movements in interest rates. We had $495.0 million in variable rate debt outstanding at December 31, 2008, upon which interest expense is subject to the movement in LIBOR. A 10% adverse movement in the interest rate, or 16 basis points, would result in an increase to interest expense of $0.8 million.

At December 31, 2007, we had three floating-to-fixed interest rate swaps which we used to hedge $150 million of variable rate debt. We terminated the swaps in January 2008 with no material impact on earnings.

We assess effectiveness of forward foreign currency contracts designated as cash flow hedges based on changes in fair value attributable to changes in spot rates. We exclude the impact attributable to changes in the difference between the spot rate and the forward rate for the assessment of hedge effectiveness, and recognize the change in fair value of this component immediately in earnings. The difference between the spot rate and the forward rate is generally related to the differences in the interest rates of the countries of the currencies being traded. Consequently, we have exposure to relative changes in interest rates between countries in our results of operations. To the extent the U.S. interest rate decreases by 10%, or 16 basis points, and other countries interest rates remain fixed, we would expect to recognize a decrease of $0.5 million in earnings in the period of change. Based on our portfolio as of December 31, 2008, we believe we have exposure to the interest rates in the U.S., Brazil, United Kingdom, the European Community and Norway.

Critical Accounting Estimates

We prepare our consolidated financial statements in conformity with United States generally accepted accounting principles. As such, we are required to make certain estimates, judgments and assumptions about matters that are inherently uncertain. On an ongoing basis, our management re-evaluates these estimates, judgments and assumptions for reasonableness because of the critical impact that these factors have on the reported amounts of assets and liabilities at the dates of the financial statements and the reported amounts of revenues and expenses during the periods presented. Management has discussed the development and selection of these critical accounting estimates with the Audit Committee of our Board of Directors and the Audit Committee has reviewed this disclosure. We believe that the following are the critical accounting estimates used in preparing our financial statements.

Percentage of Completion Method of Accounting

We record revenue on construction-type manufacturing projects using the percentage of completion method, where revenue is recorded as work progresses on each contract. There are several acceptable methods of measuring progress toward completion. Most frequently, we use the ratio of costs incurred to date to total estimated contract costs at completion to measure this progress.

We execute contracts with our customers that clearly describe the equipment, systems and/or services that we will provide and the amount of consideration we will receive. After analyzing the drawings and specifications of the contract requirements, our project engineers estimate total contract costs based on their experience with similar projects and then adjust these estimates for specific risks associated with each project, such as technical risks associated with a new design. Costs associated with specific risks are estimated by assessing the probability that conditions will arise that will affect our total cost to complete the project. After work on a project begins, assumptions that form the basis for our calculation of total project cost are examined on a monthly basis and our estimates are updated to reflect new information as it becomes available.

Revenue recorded using the percentage of completion method amounted to $2,999.9 million, $1,890.7 million and $1,552.9 million for the years ended December 31, 2008, 2007 and 2006, respectively.

A significant portion of our total revenue recorded under the percentage of completion method relates to the Energy Production Systems business segment, primarily for subsea petroleum exploration equipment projects that involve the design, engineering, manufacturing and assembly of complex, customer-specific systems. The systems are not entirely built from standard bills of material and typically require extended periods of time to design and construct.

Total estimated contract cost affects both the revenue recognized in a period as well as the reported profit or loss on a project. The determination of profit or loss on a contract requires consideration of contract revenue, change orders and claims, less costs incurred to date and estimated costs to complete. Anticipated losses on contracts are recorded in full in the period in which they are identified. Profits are recorded based on the estimated project profit multiplied by the percentage complete.

The total estimated contract cost in percentage of completion accounting is a critical accounting estimate because it can materially affect revenue and cost of sales, and it requires us to make judgments about matters that are uncertain. There are many factors, including but not limited to resource price inflation, labor availability, productivity and weather that can affect the accuracy of our cost estimates and ultimately our future profitability. In the past, we have realized both lower and higher than expected margins and have incurred losses as a result of unforeseen changes in our project costs.

The amount of revenue recognized using the percentage of completion method is sensitive to our changes in estimates of total contract costs. If we had used a different estimate of total contract costs for each contract in progress at December 31, 2008, a 1% increase or decrease in the estimated margin earned on each contract would have increased or decreased total revenue and pre-tax income for the year ended December 31, 2008 by $29.4 million.

Inventory Valuation

Inventory is recorded at the lower of cost or net realizable value. In order to determine net realizable value, we evaluate each component of inventory on a regular basis to determine whether it is excess or obsolete. We record the decline in the carrying value of estimated excess or obsolete inventory as a reduction of inventory and as an expense included in cost of sales in the period in which it is identified. Our estimate of excess and obsolete inventory is a critical accounting estimate because it is highly susceptible to change from period to period. In addition, it requires management to make judgments about the future demand for inventory.

In order to quantify excess or obsolete inventory, we begin by preparing a candidate listing of the components of inventory that have a quantity on hand in excess of usage within the most recent two-year period. This list is then reviewed with sales, engineering, production and materials management personnel to determine whether this list of potential excess or obsolete inventory items is accurate. Management considers as part of this evaluation whether there has been a change in the market for finished goods, whether there will be future demand for on-hand inventory items and whether there are components of inventory that incorporate obsolete technology. As a result, our estimate of excess or obsolete inventory is sensitive to changes in assumptions about future usage of the inventory.

Accounting for Income Taxes

Our income tax expense, deferred tax assets and liabilities, and reserves for uncertain tax positions reflect management's best assessment of estimated future taxes to be paid. We are subject to income taxes in both the U.S. and numerous foreign jurisdictions. Significant judgments and estimates are required in determining our consolidated income tax expense.

In determining our current income tax provision, we assess temporary differences resulting from differing treatments of items for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are recorded in our consolidated balance sheets. When we maintain deferred tax assets, we must assess the likelihood that these assets will be recovered through adjustments to future taxable income. To the extent we believe recovery is not likely, we establish a valuation allowance. We record an allowance reducing the asset to a value we believe will be recoverable based on our expectation of future taxable income. We believe the accounting estimate related to the valuation allowance is a critical accounting estimate because it is highly susceptible to change from period to period as it requires management to make assumptions about our future income over the lives of the deferred tax assets, and the impact of increasing or decreasing the valuation allowance is potentially material to our results of operations.

Forecasting future income requires us to use a significant amount of judgment. In estimating future income, we use our internal operating budgets and long-range planning projections. We develop our budgets and long-range projections based on recent results, trends, economic and industry forecasts influencing our segments' performance, our backlog, planned timing of new product launches, and customer sales commitments. Significant changes in the expected realizability of the deferred tax asset would require that we adjust the valuation allowance applied against the gross value of our total deferred tax assets, resulting in a change to net income.

As of December 31, 2008, we estimated that it is not more likely than not that we will generate future taxable income in certain foreign jurisdictions in which we have cumulative net operating losses and, therefore, we have provided a valuation allowance against the related deferred tax assets. As of December 31, 2008, we estimated that it is more likely than not that we will have future taxable income in the United States to utilize our domestic deferred tax assets. Therefore, we have not provided a valuation allowance against any domestic deferred tax assets.

The need for a valuation allowance is sensitive to changes in our estimate of future taxable income. If our estimate of future taxable income was 15% lower than the estimate used, we would still generate sufficient taxable income to utilize such domestic deferred tax assets.

The calculation of our income tax expense involves dealing with uncertainties in the application of complex tax laws and regulations in numerous jurisdictions in which we operate. We recognize tax benefits related to uncertain tax positions when, in our judgment, it is more likely than not that such positions will be sustained on examination, including resolutions of any related appeals or litigation, based on the technical merits. We adjust our liabilities for uncertain tax positions when our judgment changes as a result of new information previously unavailable. Due to the complexity of some of these uncertainties, their ultimate resolution may result in payments that are materially different from our current estimates. Any such differences will be reflected as adjustments to income tax expense in the periods in which they are determined.

Retirement Benefits

We provide most of our employees with certain retirement (pension) and postretirement (health care and life insurance) benefits. In order to measure the expense and obligations associated with these retirement benefits, management must make a variety of estimates, including discount rates used to value certain liabilities, expected return on plan assets set aside to fund these costs, rate of compensation increase, employee turnover rates, retirement rates, mortality rates and other factors. We update these estimates on an annual basis or more frequently upon the occurrence of significant events. These accounting estimates bear the risk of change due to the uncertainty associated with the estimate as well as the fact that these estimates are difficult to measure. Different estimates used by management could result in our recognizing different amounts of expense over different periods of time.

We use third-party specialists to assist management in evaluating our assumptions as well as appropriately measuring the costs and obligations associated with these retirement benefits. The discount rate and expected return on plan assets are based primarily on investment yields available and the historical performance of our plan assets. They are critical accounting estimates because they are subject to management’s judgment and can materially affect net income.

Pension expense was $34.0 million, $26.6 million and $24.1 million for the years ended December 31, 2008, 2007 and 2006, respectively.

The discount rate used affects the interest cost component of net periodic pension cost. The discount rate is based on rates at which the pension benefit obligation could effectively be settled on a present value basis. To determine the weighted average discount rate, we review long-term, high quality (“AA” rated) corporate bonds at our determination date and use a model that matches the projected benefit payments for our plans to coupons and maturities from high quality bonds. Significant changes in the discount rate, such as those caused by changes in the yield curve, the mix of bonds available in the market, the duration of selected bonds, and the timing of expected benefit payments may result in volatility in pension expense and pension liabilities. The weighted average discount rate used to compute net periodic benefit cost increased from 5.6% in 2007 to 6.0% in 2008.

Our pension expense is sensitive to changes in our estimate of discount rate. Holding other assumptions constant, for a 50 basis point reduction in the discount rate, annual pension expense would increase by approximately $6.6 million before taxes. Holding other assumptions constant, for a 50 basis point increase in the discount rate, annual pension expense would decrease by approximately $6.3 million before taxes.

Net periodic pension cost includes an underlying expected long-term rate of asset return. Our estimate of the expected rate of return on plan assets is based primarily on the historical performance of plan assets, current market conditions, our asset allocation and long-term growth expectations. We assumed a weighted average expected rate of return for our pension plans of 8.21% and 8.46% in 2008 and 2007, respectively. The expected return on plan assets is recognized as part of the net periodic pension cost. The difference between the expected return and the actual return on plan assets is amortized over the expected remaining service life of employees, so there is a lag time between the market's performance and its impact on plan results. Holding other assumptions constant, an increase or decrease of 50 basis points in the expected rate of return on plan assets would decrease or increase annual pension expense by approximately $4.1 million before taxes.

Recently Issued Accounting Pronouncements

In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 141 (revised 2007), "Business Combinations," ("SFAS No. 141R"), replacing SFAS No. 141. SFAS No. 141R changes or clarifies the acquisition method of accounting for acquired contingencies, transaction costs, step acquisitions, restructuring costs and other major areas affecting how the acquirer recognizes and measures the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. In addition, this pronouncement amends previous interpretations of intangible asset accounting by requiring the capitalization of in-process research and development and proscribing impacts to current income tax expense (rather than a reduction to goodwill) for changes in deferred tax benefits related to a business combination. SFAS No. 141R will be applied prospectively for business combinations occurring after December 31, 2008.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51." SFAS No. 160 will standardize the accounting for and reporting of minority interests in the financial statements, which will be presented as noncontrolling interests and classified as a component of equity. In addition, statements of operations will report consolidated net income before an allocation to both the parent and the noncontrolling interest. This new presentation will have an impact on the basic financial statements as well as the disclosures to clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling interests. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008 and is effective for us at January 1, 2009. We have not yet determined the impact, if any, that the adoption of SFAS No. 160 will have on our results of operations or financial position.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133." SFAS No. 161 requires enhanced disclosures regarding derivative instruments and hedging activities, enabling a better understanding of their effects on an entity's financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, and is effective for us at January 1, 2009.

Management believes the impact of other recently issued accounting standards, which are not yet effective, will not have a material impact on our consolidated financial statements upon adoption.

ITEM 7A. QUALITATIVE AND QUANTITATIVE DISCLOSURES ABOUT MARKET RISK

Information regarding market risks is incorporated herein by reference from the section entitled "Qualitative and Quantitative Disclosures about Market Risk" in Item 7 of this Annual Report on Form 10-K.

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ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME

	Year Ended December 31,		
(In millions, except per share data)	2008	2007	2006
Revenue	$4,550.9	$3,648.9	$2,915.4
Costs and expenses:			
Cost of sales	3,623.1	2,921.9	2,370.0
Selling, general and administrative expense	351.7	310.6	271.0
Research and development expense	45.3	40.8	33.0
Total costs and expenses	4,020.1	3,273.3	2,674.0
Other income (expense), net	(23.0)	29.9	(7.0)
Minority interests	(1.4)	(1.1)	(2.5)
Income before interest income, interest expense and income taxes	506.4	404.4	231.9
Interest income	6.6	6.8	5.1
Interest expense	(8.1)	(16.1)	(11.8)
Income from continuing operations before income taxes	504.9	395.1	225.2
Provision for income taxes	152.0	134.5	62.7
Income from continuing operations	352.9	260.6	162.5
Discontinued operations (Note 3)			
Income from discontinued operations, net of income taxes	7.9	39.1	79.0
Gain on disposition of discontinued operations, net of income taxes	0.5	3.1	34.8
Income from discontinued operations	8.4	42.2	113.8
Net income	$ 361.3	$ 302.8	$ 276.3
Basic earnings per share			
Income from continuing operations (Note 2)	$ 2.76	$ 1.98	$ 1.19
Income from discontinued operations	0.07	0.33	0.83
Basic earnings per share	$ 2.83	$ 2.31	$ 2.02
Diluted earnings per share			
Income from continuing operations (Note 2)	$ 2.72	$ 1.95	$ 1.16
Income from discontinued operations	0.06	0.31	0.81
Diluted earnings per share	$ 2.78	$ 2.26	$ 1.97
Weighted average shares outstanding (Note 2)			
Basic	127.8	131.3	137.0
Diluted	129.7	133.8	140.3

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

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

(In millions, except per share data)	December 31, 2008	December 31, 2007
Assets		
Current assets:		
Cash and cash equivalents	$ 340.1	$ 129.5
Trade receivables, net of allowances of $9.4 in 2008 and $2.8 in 2007	996.1	775.7
Inventories (Note 5)	559.3	533.2
Fair value of derivative financial instruments (Note 14)	354.6	154.5
Prepaid expenses	24.2	20.5
Other current assets	156.6	143.2
Income taxes benefit	12.8	—
Assets of discontinued operations (Note 3)	—	533.8
Total current assets	2,443.7	2,290.4
Investments	151.2	33.4
Property, plant and equipment, net (Note 6)	494.9	452.3
Goodwill (Note 7)	128.7	147.8
Intangible assets, net (Note 7)	70.2	79.6
Deferred income taxes (Note 10)	123.4	65.3
Other assets	174.2	142.3
Total assets	$3,586.3	$3,211.1
Liabilities and stockholders' equity		
Current liabilities:		
Short-term debt and current portion of long-term debt (Note 9)	$ 23.0	$ 7.2
Accounts payable, trade and other	495.9	405.6
Advance payments and progress billings	770.3	665.3
Accrued payroll	102.4	88.8
Fair value of derivative financial instruments (Note 14)	444.4	106.9
Income taxes payable	—	56.0
Current portion of accrued pension and other postretirement benefits (Note 11)	20.8	15.1
Deferred income taxes (Note 10)	0.1	35.9
Other current liabilities	102.9	121.9
Liabilities of discontinued operations (Note 3)	2.7	340.2
Total current liabilities	1,962.5	1,842.9
Long-term debt, less current portion (Note 9)	472.0	112.2
Accrued pension and other postretirement benefits, less current portion (Note 11)	182.1	50.4
Other liabilities	264.9	166.4
Related party note payable (Note 16)	—	9.9
Minority interests in consolidated companies	8.3	7.6
Commitments and contingent liabilities (Note 18)		
Stockholders' equity (Note 13):		
Preferred stock, $0.01 par value, 12.0 shares authorized; no shares issued in 2008 or 2007	—	—
Common stock, $0.01 par value, 195.0 shares authorized in 2008 and 2007; 143.2 shares issued in 2008 and 2007; 124.9 and 129.3 shares outstanding in 2008 and 2007, respectively	1.4	1.4
Common stock held in employee benefit trust, at cost; 0.1 and 0.2 shares in 2008 and 2007, respectively	(6.3)	(5.4)
Common stock held in treasury, at cost, 18.1 and 13.7 shares in 2008 and 2007, respectively	(706.0)	(422.7)
Capital in excess of par value of common stock	728.7	724.0
Retained earnings	1,087.1	771.6
Accumulated other comprehensive loss	(408.4)	(47.2)
Total stockholders' equity	696.5	1,021.7
Total liabilities and stockholders' equity	$3,586.3	$3,211.1

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

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FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

(In millions)	Year Ended December 31, 2008	2007	2006
Cash provided (required) by operating activities:			
Net income	$ 361.3	$ 302.8	$ 276.3
Income from discontinued operations, net of income taxes	(8.4)	(42.2)	(113.8)
Income from continuing operations	352.9	260.6	162.5
Adjustments to reconcile income to cash provided (required) by operating activities of continuing operations:			
Depreciation	57.7	46.9	36.9
Amortization	14.9	14.9	11.0
Net gain (loss) on disposal of assets	0.1	(2.0)	(0.1)
Employee benefit plan costs	57.0	56.5	47.6
Deferred income tax provision	63.4	5.5	36.6
Unrealized loss (gain) on derivative instruments	8.8	(30.9)	9.0
Other	7.6	6.1	9.3
Changes in operating assets and liabilities, net of effects of acquisitions:			
Trade receivables, net	(322.7)	21.9	(170.9)
Inventories	(77.1)	(25.6)	(114.3)
Accounts payable, trade and other	135.6	44.3	37.5
Advance payments and progress billings	207.6	268.0	69.7
Other assets and liabilities, net	(96.5)	(96.3)	(18.2)
Income taxes payable	(48.2)	19.5	(17.2)
Accrued pension and other postretirement benefits, net	(99.4)	(46.6)	(47.7)
Cash provided by operating activities of continuing operations	261.7	542.8	51.7
Net cash provided (required) by discontinued operations—operating	(11.1)	41.1	109.7
Cash provided by operating activities	250.6	583.9	161.4
Cash provided (required) by investing activities:			
Capital expenditures	(165.0)	(179.6)	(115.6)
Acquisitions, minority ownership positions and other investing	(121.3)	(64.4)	(9.5)
Proceeds from disposal of assets	3.4	63.0	2.9
Cash required by investing activities of continuing operations	(282.9)	(181.0)	(122.2)
Cash provided (required) by discontinued operations, net of cash sold—investing	(4.7)	(12.1)	26.4
Cash required by investing activities	(287.6)	(193.1)	(95.8)
Cash provided (required) by financing activities:			
Net increase in short-term debt	14.5	0.8	2.3
Net increase (decrease) in commercial paper	(51.0)	103.0	—
Proceeds from issuance of long-term debt	405.9	—	—
Repayment of long-term debt	—	(202.2)	(40.4)
Proceeds from exercise of stock options	4.8	19.2	26.7
Purchase of treasury stock	(324.0)	(287.4)	(142.5)
Excess tax benefits	24.0	20.6	17.9
Settlement of taxes withheld on equity compensation awards	(17.5)	(8.7)	(5.0)
Proceeds on spin-off of JBT Corporation and affiliates	196.2	—	—
Other	(0.2)	(0.9)	(0.8)
Cash provided (required) by financing activities	252.7	(355.6)	(141.8)
Effect of exchange rate changes on cash and cash equivalents	(5.1)	14.8	2.8
(Decrease) increase in cash and cash equivalents	210.6	50.0	(73.4)
Cash and cash equivalents, beginning of year	129.5	79.5	152.9
Cash and cash equivalents, end of year	$ 340.1	$ 129.5	$ 79.5
Supplemental disclosures of cash flow information:			
Cash paid for interest (net of interest capitalized)	$ 9.4	$ 17.5	$ 14.8
Cash paid for income taxes (net of refunds received)	$ 132.3	$ 93.5	$ 52.9

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

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY

(In millions)	Common stock	Common stock held in treasury and employee benefit trust	Capital in excess of par value of common stock	Retained earnings	Accumulated other comprehensive income (loss)	Total	Comprehensive income (loss)
Balance at December 31, 2005	$ 0.7	$ (67.5)	$ 681.6	$ 193.2	$ (108.5)	$ 699.5	
Net Income	—	—	—	276.3	—	276.3	$ 276.3
Issuance of common stock	—	—	26.7	—	—	26.7	
Excess tax benefits on stock-based payment arrangements	—	—	17.9	—	—	17.9	
Taxes withheld on issuance of stock-based awards	—	—	(5.0)	—	—	(5.0)	
Purchases of treasury stock (Note 13)	—	(142.5)	—	—	—	(142.5)	
Reissuances of treasury stock (Note 13)	—	10.5	(10.5)	—	—	—	
Net purchases of common stock for employee benefit trust	—	(0.9)	—	—	—	(0.9)	
Stock-based compensation (Note 12)	—	—	20.6	—	—	20.6	
Foreign currency translation adjustment	—	—	—	—	35.7	35.7	35.7
Net deferral of hedging gains (net of income taxes of $4.6) (Note 14)	—	—	—	—	7.8	7.8	7.8
Minimum pension liability adjustment (net of income taxes of $7.8)	—	—	—	—	24.8	24.8	24.8
Adjustment for adoption of SFAS No. 158 (net of income taxes of $34.2) (Note 11)	—	—	—	—	(72.0)	(72.0)	
Other	—	—	(2.9)	—	—	(2.9)	
							$ 344.6
Balance at December 31, 2006	$ 0.7	$ (200.4)	$ 728.4	$ 469.5	$ (112.2)	$ 886.0	
Net income	—	—	—	302.8	—	302.8	$ 302.8
Issuance of common stock	—	—	19.2	—	—	19.2	
Excess tax benefits on stock-based payment arrangements	—	—	20.6	—	—	20.6	
Taxes withheld on issuance of stock-based awards	—	—	(8.7)	—	—	(8.7)	
Purchases of treasury stock (Note 13)	—	(287.4)	—	—	—	(287.4)	
Reissuances of treasury stock (Note 13)	—	60.6	(60.6)	—	—	—	
Net purchases of common stock for employee benefit trust	—	(0.9)	—	—	—	(0.9)	
Stock-based compensation (Note 12)	—	—	25.5	—	—	25.5	
Stock split	0.7	—	(0.7)	—	—	—	
Foreign currency translation adjustment	—	—	—	—	53.7	53.7	53.7
Net deferral of hedging gains (net of income taxes of $9.6) (Note 14)	—	—	—	—	13.3	13.3	13.3
Change in pension and other postretirement benefit losses (net of income taxes of $0.8) (Note 11)	—	—	—	—	(2.0)	(2.0)	(2.0)
Other	—	—	0.3	(0.7)	—	(0.4)	
							$ 367.8
Balance at December 31, 2007	$ 1.4	$ (428.1)	$ 724.0	$ 771.6	$ (47.2)	$1,021.7	

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(In millions)	Common stock	Common stock held in treasury and employee benefit trust	Capital in excess of par value of common stock	Retained earnings	Accumulated other comprehensive income (loss)	Total	Comprehensive income (loss)
Balance at December 31, 2007	$ 1.4	$ (428.1)	$ 724.0	$ 771.6	$ (47.2)	$1,021.7	
Net income	—	—	—	361.3	—	361.3	$ 361.3
Issuance of common stock	—	—	4.8	—	—	4.8	
Excess tax benefits on stock-based payment arrangements	—	—	24.0	—	—	24.0	
Taxes withheld on issuance of stock-based awards	—	—	(17.5)	—	—	(17.5)	
Purchases of treasury stock (Note 13)	—	(324.0)	—	—	—	(324.0)	
Reissuances of treasury stock (Note 13)	—	40.7	(40.7)	—	—	—	
Net purchases of common stock for employee benefit trust	—	(1.5)	3.2	—	—	1.7	
Stock-based compensation (Note 12)	—	—	30.2	—	—	30.2	
Foreign currency translation adjustment	—	—	—	—	(139.1)	(139.1)	(139.1)
Net deferral of hedging gains (net of income taxes of $64.8) (Note 13)	—	—	—	—	(110.2)	(110.2)	(110.2)
Change in pension and other postretirement benefit losses (net of income taxes of $77.7) (Note 11)	—	—	—	—	(137.9)	(137.9)	(137.9)
Changes in investments (net of income taxes of $0.8) (Note 13)	—	—	—	—	(1.9)	(1.9)	(1.9)
Spin-off of JBT	—	0.6	0.7	(46.1)	27.9	(16.9)	
Other	—	—	—	0.3	—	0.3	—
							$ (27.8)
Balance at December 31, 2008	$ 1.4	$ (712.3)	$ 728.7	$1,087.1	$ (408.4)	$ 696.5	

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

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of presentation—FMC Technologies, Inc. and consolidated subsidiaries ("FMC Technologies" or "we") designs, manufactures and services sophisticated machinery and systems for our customers through our business segments: Energy Production Systems and Energy Processing Systems. Our consolidated financial statements have been prepared in United States dollars and in accordance with United States generally accepted accounting principles ("GAAP").

On July 18, 2007, we announced that our Board of Directors approved a two-for-one stock split in the form of a stock dividend payable on August 31, 2007 to shareholders of record as of August 17, 2007. At August 31, 2007, an adjustment was made to reclassify an amount from capital in excess of par value to common stock to account for the par value of the common stock issued as a stock dividend. This adjustment had no overall effect on equity. We have revised the historical common share and per common share information in this report to reflect the effects of the stock split.

In October 2007, we announced the intention to spin-off 100% of our FoodTech and Airport Systems businesses. On July 12, 2008, our Board of Directors approved the spin-off of the businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend of all outstanding shares of John Bean Technologies Corporation ("JBT"), which is now an independent public company traded on the New York Stock Exchange (symbol JBT). The results of JBT have been reported as discontinued operations for all periods presented.

Use of estimates—The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates. We base our estimates on historical experience and on other assumptions that we believe to be relevant under the circumstances. In particular, judgment is used in areas such as revenue recognition using the percentage of completion method of accounting, making estimates associated with the valuation of inventory and income tax assets, and accounting for retirement benefits and contingencies.

Principles of consolidation—The consolidated financial statements include the accounts of FMC Technologies and its majority-owned subsidiaries and affiliates. Intercompany accounts and transactions are eliminated in consolidation.

Reclassifications—Certain prior-year amounts have been reclassified to conform to the current year's presentation. We reclassified unrealized gains related to unexecuted sales contracts of $7.4 million for the year ended December 31, 2007 from cost of sales to revenue on the consolidated statements of income. The unrealized gains in revenue are presented as other revenue in the business segment disclosure. We reclassified net discontinued gains on the disposal of assets of $1.1 million for the year ended December 31, 2006 from cost of sales to other income (expense), net on the consolidated statements of income.

Correction of an immaterial error—We have corrected an immaterial error in the accompanying Consolidated Statements of Cash Flows for the years ended December 31, 2007 and 2006, by adjusting cash paid from operating activities to financing activities. The correction relates to the minimum tax withholding paid to taxing authorities on behalf of employees for share-based compensation awards that is required to be classified as a financing activity in the statement of cash flows. The correction increased cash provided by operating activities for the years ended December 31, 2007 and 2006 by $8.7 million and $5.0 million, respectively, with an offsetting decrease of $8.7 million and $5.0 million, respectively, in cash required by financing activities. The correction of error does not impact the net change in cash and cash equivalents and is not material to our previously reported Consolidated Statements of Cash Flows.

Revenue recognition—Revenue from equipment sales is recognized either upon transfer of title to the customer (which is upon shipment or when customer-specific acceptance requirements are met) or under the percentage of completion method. Service revenue is recognized as the service is provided. We record our sales net of any value added, sales or use tax.

The percentage of completion method of accounting is used for construction-type manufacturing and assembly projects that involve significant design and engineering effort in order to satisfy detailed customer-supplied specifications. Under the percentage of completion method, revenue is recognized as work progresses on each contract. We primarily apply the ratio of costs incurred to date to total estimated contract costs at completion to measure this ratio. If it is not possible to form a reliable estimate of progress toward completion, no revenues or costs are recognized until the project is complete or substantially complete. Any expected losses on construction-type contracts in progress are charged to earnings, in total, in the period the losses are identified.

Modifications to construction-type contracts, referred to as “change orders,” effectively change the provisions of the original contract, and may, for example, alter the specifications or design, method or manner of performance, equipment, materials, sites, and/or period for completion of the work. If a change order represents a firm price commitment from a customer, we account for the revised estimate as if it had been included in the original estimate, effectively recognizing the pro rata impact of the new estimate on our calculation of progress toward completion in the period in which the firm commitment is received. If a change order is unpriced: (1) we include the costs of contract performance in our calculation of progress toward completion in the period in which the costs are incurred or become probable; and (2) when it is determined that the revenue is probable of recovery, we include the change order revenue, limited to the costs incurred to date related to the change order, in our calculation of progress toward completion. Margin is not recorded on unpriced change orders unless realization is assured beyond a reasonable doubt. The assessment of realization may be based upon our previous experience with the customer or based upon our receipt of a firm price commitment from the customer.

Progress billings generally are issued contingent on completion of certain phases of the work as stipulated in the contract. Revenue in excess of progress billings on contracts accounted for under the percentage of completion method amounted to $150.6 million and $163.4 million at December 31, 2008 and 2007, respectively. These unbilled receivables are reported in trade receivables on the consolidated balance sheets. Progress billings and cash collections in excess of revenue recognized on a contract are classified as advance payments and progress billings within current liabilities on the consolidated balance sheets.

Cash equivalents—We consider investments in all highly-liquid debt instruments with original maturities of three months or less to be cash equivalents.

Trade receivables—We provide an allowance for doubtful accounts on trade receivables equal to the estimated uncollectible amounts. This estimate is based on historical collection experience and a specific review of each customer’s trade receivable balance.

Inventories—Inventories are stated at the lower of cost or net realizable value. Inventory costs include those costs directly attributable to products, including all manufacturing overhead but excluding costs to distribute. Cost is determined on the last-in, first-out (“LIFO”) basis for all significant domestic inventories, except certain inventories relating to construction-type contracts, which are stated at the actual production cost incurred to date, reduced by the portion of these costs identified with revenue recognized. The first-in, first-out (“FIFO”) method is used to determine the cost for all other inventories.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Impairment of long-lived and intangible assets—Long-lived assets, including property, plant and equipment, identifiable intangible assets being amortized and capitalized software costs are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the long-lived asset may not be recoverable. The carrying amount of a long-lived asset is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. If it is determined that an impairment loss has occurred, the loss is measured as the amount by which the carrying amount of the long-lived asset exceeds its fair value.

Long-lived assets held for sale are reported at the lower of carrying value or fair value less cost to sell.

Investments—Investments in the common stock of affiliated companies in which our ownership is between 20% and 50% and in which we exercise significant influence over operating and financial policies, but do not have effective control, are accounted for using the equity method of accounting. On December 26, 2008, we acquired a 45% interest in Schilling for a total purchase price of up to $116.0 million, less certain transaction expenses. The total purchase price is subject to potential post-closing adjustments which will not increase the total purchase price. The Securities Purchase Agreement between FMC Technologies and Schilling provided that FMC Technologies directly withhold $10.0 million of the sales proceeds, pending the satisfactory completion of the audit of Schilling's 2008 financial statements. The $10.0 million withheld from the total purchase price is reported in other current liabilities. We paid cash consideration of approximately $106.0 million upon closing of the transaction. We account for the investment using the equity method. The carrying value of the investment at December 31, 2008 was $116.1 million and is reported in the Energy Production segment. We are in the process of evaluating whether there is a difference between the carrying amount of the investment and the amount of underlying equity in net assets and anticipate the assessment to be complete during the first quarter of 2009.

We determine the appropriate classification of investments in marketable equity securities at the time of purchase and re-evaluate such designation as of each subsequent reporting date. Securities classified as available-for-sale are carried at fair value with unrealized holding gains and losses on these securities recognized in accumulated other comprehensive income (loss), net of related income tax. Available-for-sale securities totaled $13.3 million at December 31, 2008.

Securities classified as trading securities are carried at fair value with gains and losses on these securities recognized through other income (expense), net. Trading securities are comprised primarily of marketable equity mutual funds that approximate a portion of our liability under our Non-Qualified Savings and Investment Plan. Trading securities totaled approximately $21.8 million and $33.4 million at December 31, 2008 and 2007, respectively.

We assess any declines in the value of individual investments to determine whether the decline is other-than-temporary and thus the investment is impaired.

Property, plant, and equipment—Property, plant, and equipment is recorded at cost. Depreciation for financial reporting purposes is provided principally on the straight-line basis over the estimated useful lives of the assets (land improvements—20 to 35 years, buildings—20 to 50 years; and machinery and equipment—3 to 20 years). Gains and losses are reflected in income upon the sale or retirement of assets. Expenditures that extend the useful lives of property, plant, and equipment are capitalized and depreciated over the estimated new remaining life of the asset.

Capitalized software costs—Other assets include the capitalized cost of internal use software (including Internet web sites). The assets are stated at cost less accumulated amortization and totaled $25.3 million and $18.8 million at December 31, 2008 and 2007, respectively. These software costs include significant purchases of software and internal and external costs incurred during the application development stage of software projects. These costs are amortized on a straight-line basis over the estimated useful lives of the assets. For internal use software, the useful lives range from three to ten years. For Internet web site costs, the estimated useful lives do not exceed three years.

Goodwill and other intangible assets—Goodwill is not subject to amortization but is tested for impairment on an annual basis (or more frequently if impairment indicators arise) under the provisions of Statement of Financial Accounting Standards ("SFAS") No. 142, "Goodwill and Other Intangible Assets." We have established October 31 as the date of our annual test for impairment of goodwill. Impairment losses are calculated at the reporting unit level, and represent the excess of the carrying value of reporting unit goodwill over its implied fair value. The implied fair value of goodwill is determined by a two-step process. The first compares the fair value of the reporting unit (measured as the present value of expected future cash flows) to its carrying amount. If the fair value of the reporting unit is less than its carrying amount, a second step is performed. In this step, the fair value of the reporting unit is allocated to its assets and liabilities to determine the implied fair value of goodwill, which is used to measure the impairment loss. We have not recognized any impairment for the years ended December 31, 2008 or 2007 as the fair values of our reporting units with goodwill balances exceed our carrying amounts.

Our acquired intangible assets are being amortized on a straight-line basis over their estimated useful lives, which generally range from 7 to 40 years. None of our acquired intangible assets have indefinite lives.

Reserve for discontinued operations—This reserve reflects liabilities of our disposed businesses. The balance includes reserves related to personal injury and product liability claims associated with our discontinued operations as well as other unpaid employee-related and transaction costs resulting from the disposals. Personal injury and product liability claims reserves are recorded based on an actuarially-determined estimate of liabilities for both reported claims and incurred but unreported claims. Adjustments to the reserve for discontinued operations are included in results of discontinued operations in the consolidated statements of income. The reserve for discontinued operations, which is recorded in other long-term liabilities in the consolidated balance sheets, amounted to $0.3 million and $2.2 million at December 31, 2008 and 2007, respectively.

Income taxes—Current income taxes are provided on income reported for financial statement purposes, adjusted for transactions that do not enter into the computation of income taxes payable in the same year. Deferred tax assets and liabilities are measured using enacted tax rates for the expected future tax consequences of temporary differences between the carrying amounts and the tax bases of assets and liabilities. A valuation allowance is established whenever management believes that it is more likely than not that deferred tax assets may not be realizable.

Income taxes are not provided on our equity in undistributed earnings of foreign subsidiaries or affiliates when it is management's intention that such earnings will remain invested in those companies. Taxes are provided on such earnings in the period in which the decision is made to repatriate the earnings.

Stock-based employee compensation—We measure compensation cost on restricted stock awards based on the market price at the grant date and the number of shares awarded. The compensation cost for each award is recognized ratably over the applicable service period, after taking into account estimated forfeitures. On October 1, 2005, we adopted the provisions of SFAS No. 123R, "Share-Based Payment," which modified our recognition of share-based compensation by (i) incorporating an estimate of forfeitures in the calculation of current expense to record and (ii) adjusting the recognition period for new awards that accelerate vesting upon retirement to reflect the lesser of the stated vesting period or the period until the employee becomes retirement eligible.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Common stock held in employee benefit trust—Shares of our common stock are purchased by the plan administrator of the FMC Technologies, Inc. Non-Qualified Savings and Investment Plan and placed in a trust owned by us. Purchased shares are recorded at cost and classified as a reduction of stockholders' equity in the consolidated balance sheets.

Earnings per common share ("EPS")—Basic EPS is computed using the weighted-average number of common shares outstanding. Diluted EPS gives effect to the potential dilution of earnings which could have occurred if additional shares were issued for stock option exercises and restricted stock under the treasury stock method. The treasury stock method assumes that proceeds that would be obtained upon exercise of common stock options and issuance of restricted stock are used to buy back outstanding common stock at the average market price during the period.

Foreign currency—Financial statements of operations for which the U.S. dollar is not the functional currency, and are located in non-highly inflationary countries, are translated to the U.S. dollar prior to consolidation. Assets and liabilities are translated at the exchange rate in effect at the balance sheet date, while income statement accounts are translated at the average exchange rate for each period. For these operations, translation gains and losses are recorded as a component of accumulated other comprehensive income (loss) in stockholders' equity until the foreign entity is sold or liquidated. For operations in highly inflationary countries and where the local currency is not the functional currency, inventories, property, plant and equipment, and other non-current assets are converted to U.S. dollars at historical exchange rates, and all gains or losses from conversion are included in net income. Foreign currency effects on cash, cash equivalents, and debt in hyperinflationary economies are included in interest income or expense.

Derivative financial instruments—Derivatives are recognized in the consolidated balance sheets at fair value, with classification as current or non-current based upon the maturity of the derivative instrument. Changes in the fair value of derivative instruments are recorded in current earnings or deferred in accumulated other comprehensive income (loss), depending on the type of hedging transaction and whether a derivative is designated as, and is effective as, a hedge.

Hedge accounting is only applied when the derivative is deemed to be highly effective at offsetting changes in anticipated cash flows of the hedged item or transaction. Changes in fair value of derivatives that are designated as cash flow hedges are deferred in accumulated other comprehensive income (loss) until the underlying transactions are recognized in earnings. At such time related deferred hedging gains or losses are also recorded in operating earnings on the same line as the hedged item. Effectiveness is assessed at the inception of the hedge and on a quarterly basis. Effectiveness of forward contract cash flow hedges are assessed based solely on changes in fair value attributable to the change in the spot rate. The change in the fair value of the contract related to the change in forward rates is excluded from the assessment of hedge effectiveness. Changes in this excluded component of the derivative instrument, along with any ineffectiveness identified, are recorded in operating earnings as incurred. We document our risk management strategy and hedge effectiveness at the inception of and during the term of each hedge. We also use forward contracts to hedge foreign currency assets and liabilities. These contracts are not designated as hedges; therefore, the changes in fair value of these contracts are recognized in other income (expense), net, as they occur and offset gains or losses on the remeasurement of the related asset or liability.

Cash flows from derivative contracts are reported in the consolidated statements of cash flows in the same categories as the cash flows from the underlying transactions.

Recently issued accounting pronouncements—In December 2007, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 141 (revised 2007), "Business

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Combinations," ("SFAS No. 141R"), replacing SFAS No. 141. SFAS No. 141R changes or clarifies the acquisition method of accounting for acquired contingencies, transaction costs, step acquisitions, restructuring costs and other major areas affecting how the acquirer recognizes and measures the assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. In addition, this pronouncement amends previous interpretations of intangible asset accounting by requiring the capitalization of in-process research and development and proscribing impacts to current income tax expense (rather than a reduction to goodwill) for changes in deferred tax benefits related to a business combination. SFAS No. 141R will be applied prospectively for business combinations occurring after December 31, 2008.

In December 2007, the FASB issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51." SFAS No. 160 will standardize the accounting for and reporting of minority interests in the financial statements, which will be presented as noncontrolling interests and classified as a component of equity. In addition, statements of operations will report consolidated net income before an allocation to both the parent and the noncontrolling interest. This new presentation will have an impact on the basic financial statements as well as the disclosures to clearly identify and distinguish between the interests of the parent and the interests of the noncontrolling interests. SFAS No. 160 is effective for fiscal years beginning after December 15, 2008 and is effective for us at January 1, 2009. We have not yet determined the impact, if any, that the adoption of SFAS No. 160 will have on our results of operations or financial position.

In March 2008, the FASB issued SFAS No. 161, "Disclosures about Derivative Instruments and Hedging Activities—an amendment of FASB Statement No. 133." SFAS No. 161 requires enhanced disclosures regarding derivative instruments and hedging activities, enabling a better understanding of their effects on an entity's financial position, financial performance and cash flows. SFAS No. 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008, and is effective for us at January 1, 2009.

Management believes the impact of other recently issued accounting standards, which are not yet effective, will not have a material impact on our consolidated financial statements upon adoption.

NOTE 2. EARNINGS PER SHARE ("EPS")

The following schedule is a reconciliation of the basic and diluted EPS computations:

	Year Ended December 31,		
(In millions, except per share data)	**2008**	**2007**	**2006**
Basic earnings per share:			
Income from continuing operations	$352.9	$260.6	$162.5
Weighted average number of shares outstanding	127.8	131.3	137.0
Basic earnings per share from continuing operations	$ 2.76	$ 1.98	$ 1.19
Diluted earnings per share:			
Income from continuing operations	$352.9	$260.6	$162.5
Weighted average number of shares outstanding	127.8	131.3	137.0
Effect of dilutive securities:			
Options on common stock	0.5	1.0	1.7
Restricted stock	1.4	1.5	1.6
Total shares and dilutive securities	129.7	133.8	140.3
Diluted earnings per share from continuing operations	$ 2.72	$ 1.95	$ 1.16

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NOTE 3. DISCONTINUED OPERATIONS

We report discontinued operations in accordance with the guidance of SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets." Accordingly, we report businesses or asset groups as discontinued operations when we commit to a plan to divest the business or asset group and the sale of the business or asset group is deemed probable within the next 12 months.

In October 2007, we announced the intention to spin-off 100% of our FoodTech and Airport Systems businesses. On July 12, 2008, our Board of Directors approved the spin-off of the businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend to our shareholders. We distributed 0.216 shares of JBT common stock for every share of our stock outstanding as of the close of business on July 22, 2008. We did not retain any shares of JBT common stock. JBT is now an independent public company traded on the New York Stock Exchange (symbol JBT).

Prior to the spin-off, we received necessary regulatory approvals, including a private letter ruling from the Internal Revenue Service ("IRS") regarding the tax-free status of the transaction for U.S. federal income tax purposes and a declaration of effectiveness from the Securities and Exchange Commission for JBT's registration statement on Form 10. The distribution resulted in a net decrease in our stockholders' equity of $16.9 million which primarily represents a $46.1 million decrease in retained earnings partially offset by a $27.9 million decrease in accumulated other comprehensive loss.

In connection with this transaction, JBT distributed $157.8 million to us which was used to repurchase stock and reduce our outstanding debt, pursuant to certain terms of the IRS private letter ruling. JBT made an additional cash distribution to FMC Technologies Inc. of $38.4 million in October 2008, pursuant to certain terms of the Separation and Distribution Agreement entered into by FMC Technologies and JBT. This amount is reported in cash and cash equivalents in the consolidated balance sheet at December 31, 2008. However, as required under the terms of the IRS private letter ruling, this amount is currently held in a segregated account and must be used to repurchase FMC Technologies stock no later than July 31, 2009.

At the time of the spin-off of JBT, all outstanding stock options to purchase our common stock and all restricted stock shares awarded in 2007 and held by employees of JBT were cancelled. Restricted stock shares awarded prior to 2007 and held by employees of JBT were maintained by us and will vest in 2009. At the completion of the spin-off of JBT, outstanding stock options to purchase our common stock and outstanding restricted stock units held by our directors and employees who remained with us were adjusted to preserve the intrinsic value of the shares held prior to the spin-off.

During 2007, we sold two units from our FoodTech segment, one of which generated an after-tax gain of $3.1 million.

During 2006, we sold our Floating Systems subsidiary for $54.4 million. Floating Systems supplied turret and mooring systems, riser systems and control and service buoys for a broad range of marine and subsea projects. We recorded a gain on disposal of $34.8 million, net of tax of $18.5 million. Net assets disposed in the sale included $1.7 million in goodwill. With the sale of our Floating Systems subsidiary, we have no continuing involvement in floating production systems.

The results of the businesses, including the gains on disposition, have been reported as discontinued operations for all periods presented.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The consolidated statements of income include the following in discontinued operations:

	Year Ended December 31,		
(In millions)	2008	2007	2006
Revenue	$612.5	$997.2	$1,002.6
Income before income taxes	$ 35.3	$ 66.3	$ 163.8
Income tax provision	26.9	24.1	50.0
Income from discontinued operations	$ 8.4	$ 42.2	$ 113.8

Income from discontinued operations in 2006 includes $1.9 million in income resulting from the resolution of product liability claims related to our discontinued construction equipment group.

The major classes of assets and liabilities of businesses reported as discontinued operations included in the accompanying consolidated balance sheets are shown below:

	Year Ended December 31,	
(In millions)	2008	2007
Assets:		
Trade receivables, net	$ —	$182.5
Inventories	—	142.9
Property, plant and equipment, net	—	126.8
Other assets	—	81.6
Assets of discontinued operations	$ —	$533.8
Liabilities:		
Accounts payable, trade and other	$ —	$ 98.9
Advance payments and progress billings	—	101.6
Other liabilities	2.7	139.7
Liabilities of discontinued operations	$ 2.7	$340.2

NOTE 4. BUSINESS COMBINATION

In August 2003, we acquired 55% of CDS Engineering BV ("CDS") and retained a commitment to purchase the remaining 45% in 2009 from the original CDS owners, who are members of CDS management and therefore related parties.

In the first quarter of 2007, CDS issued 18,000 shares to the minority interest shareholder of a CDS subsidiary in exchange for all of the minority interest outstanding of that subsidiary. The minority interest holder of the subsidiary was a member of CDS management and was therefore a related party. This transaction resulted in the minority shareholder obtaining a 9% interest in CDS and diluted the original CDS owners' and our interest to 40.95% and 50.05%, respectively.

The agreement associated with this transaction required that we repurchase the CDS shares issued, and therefore, we recorded the transaction as the purchase of minority interest by issuing redeemable shares in accordance with EITF D-98 "Classification and Measurement of Redeemable Securities." The initial carrying amount of the redeemable shares was $10.0 million and reflected the fair value of the shares issued in exchange for the subsidiary's minority interest. We recorded $3.1 million in intangibles, $6.8 million in goodwill and $0.8 million in deferred tax liabilities in connection with the transaction. During the fourth quarter of 2007, we converted the redeemable securities into a note payable in two installments scheduled for 2009 and 2011 (Note 16). We agreed to provide additional consideration in 2011 contingent upon earnings and continued employment. The individual voluntarily terminated employment during 2008 and no further consideration related to continued employment is required. Likewise, we were released from the obligations associated with the note payable through its replacement by an escrow agreement with scheduled payments, totaling approximately $7.8 million, to be made in accordance with the original terms of the note payable. The principal amount due to the individual is appropriately recorded in current and long-term debt at December 31, 2008.

In the second quarter of 2007, we amended the 2003 Sales and Purchase Agreement with the original CDS owners to allow for the purchase of their 40.95% interest immediately for cash of $40.0 million plus a payment in 2009 consisting of a fixed amount of 11.2 million Euros and a variable component based on CDS earnings. During the fourth quarter of 2007, we settled both the fixed and variable commitments with a payment of 13.5 million Euros. We recorded $35.6 million in intangible assets, $27.6 million in goodwill and $4.3 million in deferred tax liabilities. These transactions accelerated our planned buyout of the minority shareholders and allowed us to record 100% of CDS earnings beginning April 2, 2007. CDS has been a consolidated subsidiary reported in the Energy Production Systems segment since our initial investment in 2003.

NOTE 5. INVENTORIES

Inventories consisted of the following:

(In millions)	December 31, 2008	December 31, 2007
Raw materials	$ 124.8	$ 134.8
Work in process	84.7	87.7
Finished goods	472.2	424.5
Gross inventories before LIFO reserves and valuation adjustments	681.7	647.0
LIFO reserves and valuation adjustments	(122.4)	(113.8)
Inventory, net	$ 559.3	$ 533.2

Net inventories accounted for under the LIFO method totaled $154.3 million and $126.8 million at December 31, 2008 and 2007, respectively. The current replacement costs of LIFO inventories exceeded their recorded values by $78.7 million and $71.8 million at December 31, 2008 and 2007, respectively. There were no reductions of LIFO inventory in 2008, 2007 or 2006.

NOTE 6. PROPERTY, PLANT AND EQUIPMENT

Property, plant and equipment consisted of the following:

(In millions)	December 31, 2008	December 31, 2007
Land and land improvements	$ 19.7	$ 15.7
Buildings	150.7	136.0
Machinery and equipment	551.0	511.2
Construction in process	105.7	138.6
	827.1	801.5
Accumulated depreciation	(332.2)	(349.2)
Property, plant and equipment, net	$ 494.9	$ 452.3

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Depreciation expense was $57.7 million, $46.9 million, and $36.9 million in 2008, 2007 and 2006, respectively.

The amount of interest cost capitalized was $3.8 million, $5.0 million and $2.7 million in 2008, 2007 and 2006, respectively.

NOTE 7. GOODWILL AND INTANGIBLE ASSETS

Goodwill—

The carrying amount of goodwill by business segment was as follows:

	December 31,	
(In millions)	**2008**	**2007**
Energy Production Systems	$114.7	$133.7
Energy Processing Systems	14.0	14.1
Total goodwill	$128.7	$147.8

In 2007, we recorded $34.4 million in goodwill in connection with our purchases of minority interests in CDS and $3.3 million related to an acquisition in the Energy Processing Systems segment. Certain of our goodwill balances are subject to foreign currency translation adjustments. Fluctuations in exchange rates contributed to the $19.1 million decrease in the total goodwill balance for 2008.

Intangible assets—The components of intangible assets were as follows:

	December 31,			
	2008		2007	
(In millions)	**Gross carrying amount**	**Accumulated amortization**	**Gross carrying amount**	**Accumulated amortization**
Customer lists	$ 34.3	$ 6.6	$ 35.1	$ 4.2
Patents and acquired technology	48.1	10.2	49.9	7.1
Trademarks	6.6	2.6	6.8	2.2
Other	2.0	1.4	4.1	2.8
Total intangible assets	$ 91.0	$ 20.8	$ 95.9	$ 16.3

Additions to our intangible assets during 2007 included assets associated with our purchases of minority interests in CDS. There were no additions to our intangible assets during 2008.

All of our acquired identifiable intangible assets are subject to amortization and, where applicable, foreign currency translation adjustments. We recorded $7.2 million, $6.5 million and $2.1 million in amortization expense related to acquired intangible assets during the years ended December 31, 2008, 2007 and 2006, respectively. In the fourth quarter of 2007, management revised their estimate of the remaining lives of the intangible assets related to the acquisition of CDS. Therefore, we effected a change in estimate to reduce the remaining life for customer lists from 25 years to 15 years; for patents and acquired technology from 20 years to 15 years; and for trademarks from 20 years to 10 years. We accounted for this change in estimate in the fourth quarter of 2007 and the impact was not material. During the years 2009 through 2013, annual amortization expense is expected to be as follows: $5.9 million in 2009, $5.9 million in 2010, $5.5 million in 2011, $5.3 million in 2012, and $5.0 million in 2013.

NOTE 8. SALE LEASEBACK TRANSACTION

In March 2007, we sold and leased back property in Houston, Texas consisting of land, corporate offices and production facilities primarily related to the Energy Production Systems segment. We received proceeds of $58.1 million in connection with the sale. The carrying value of the property sold was $20.3 million. We accounted for the transaction as a sale leaseback resulting in (i) first quarter 2007 recognition of $1.3 million of the $37.4 million gain on the transaction and (ii) the deferral of the remaining $36.1 million of the gain, which will be amortized to rent expense over a noncancellable ten-year lease term. The deferred gain is presented in other liabilities in the consolidated balance sheet. The lease expires in 2022 and provides for two 5-year optional extensions as well as the option to terminate the lease in 2017, subject to a $3.3 million fee. Annual rent of $4.2 million escalates 2% per year. The lease has been recorded as an operating lease.

NOTE 9. DEBT

In December 2007, we entered into a $600 million five-year revolving credit agreement maturing in December 2012 with JPMorgan Chase Bank, N.A., as Administrative Agent. Borrowings under the credit agreement accrue interest at a rate equal to, at our option; either (a) a base rate determined by reference to the higher of (1) the agent's prime rate and (2) the federal funds rate plus 1/2 of 1% or (b) an interest rate of 45 basis points above the London Interbank Offered Rate ("LIBOR"). The margin over LIBOR is variable and is determined based on our debt rating. Among other restrictions, the terms of the credit agreement include negative covenants related to liens and a financial covenant related to the debt to earnings ratio. We are in compliance with all restrictive covenants as of December 31, 2008.

Available capacity under the credit facility is reduced by outstanding letters of credit associated with the facility, which totaled $26.9 million as of December 31, 2008, and any outstanding commercial paper. Unused capacity under the credit facility at December 31, 2008 totaled $114.1 million.

We have a $5 million short-term uncommitted credit facility maturing on December 31, 2009. There were no borrowings under the facility at December 31, 2008.

Commercial paper—Under our commercial paper program, we have the ability to access $500.0 million of short-term financing through our commercial paper dealers subject to the limit of unused capacity of the $600 million five-year revolving credit facility. Commercial paper borrowings are issued at market interest rates.

Property financing—In September 2004, we entered into agreements for the sale and leaseback of an office building having a net book value of $8.5 million. Under the terms of the agreement, the building was sold for $9.7 million in net proceeds and leased back under a 10-year lease. We have subleased this property to a third party under a lease agreement that is being accounted for as an operating lease. We have accounted for the transaction as a financing transaction and are amortizing the related obligation using an effective annual interest rate of 5.37%.

Uncommitted credit—We have uncommitted credit lines at many of our international subsidiaries for immaterial amounts. We utilize these facilities to provide a more efficient daily source of liquidity. The effective interest rates depend upon the local national market.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Short-term debt and current portion of long-term debt—Short-term debt and current portion of long-term debt consisted of the following:

(In millions)	December 31, 2008	December 31, 2007
Property financing	$ 0.4	$ 0.4
Foreign uncommitted credit facilities	19.1	6.8
Other	3.5	—
Total short-term debt and current portion of long-term debt	$23.0	$ 7.2

Long-term debt—Long-term debt consisted of the following:

(In millions)	December 31, 2008	December 31, 2007
Revolving credit facilities	$407.0	$ —
Commercial paper (1)	52.0	103.0
Property financing	8.5	8.9
Other	8.4	0.7
Total long-term debt	475.9	112.6
Less: current portion	(3.9)	(0.4)
Long-term debt, less current portion	$472.0	$112.2

(1) Committed credit available under our five-year revolving credit facility maturing in 2012 provides the ability to refinance our commercial paper obligations on a long-term basis. Therefore, at December 31, 2008 as we have both the ability and intent to refinance these obligations on a long-term basis, our commercial paper borrowings were classified as long-term on the consolidated balance sheet. Commercial paper borrowings as of December 31, 2008 had an average interest rate of 1.68%.

Maturities of total long-term debt as of December 31, 2008, are payable as follows: $3.9 million in 2009, $0.4 million in 2010, $4.8 million in 2011, $459.5 million in 2012, $0.6 million in 2013 and $6.7 million thereafter.

Interest rate swaps—During 2007, we held interest rate swaps related to interest payments on $150.0 million of our variable rate borrowings on our $370 million revolving credit facility. The effect of these interest rate swaps, which were acquired in December 2005, was to fix the effective annual interest rate of these variable rate borrowings at 5.25%. The swaps were accounted for as cash flow hedges. In December 2007, the variable rate borrowings on the $370 million revolving credit facility were repaid in full and replaced with variable rate commercial paper. The swaps were terminated in January 2008 with no material earnings impact.

The deferred gain from a prior discontinued swap transaction in the amount of $4.6 million was included in accumulated other comprehensive loss as of December 31, 2006, and $1.0 million and $3.6 million of the gain has been amortized during 2008 and 2007, respectively, as interest expense on the underlying debt affected earnings.

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NOTE 10. INCOME TAXES

Domestic and foreign components of income before income taxes are shown below:

	Year Ended December 31,		
(In millions)	2008	2007	2006
Domestic	$ 63.4	$104.2	$ 40.5
Foreign	441.5	290.9	184.7
Income before income taxes	$504.9	$395.1	$225.2

The provision for income taxes consisted of:

	Year Ended December 31,		
(In millions)	2008	2007	2006
Current:			
Federal	$ 19.7	$ 46.5	$ (1.4)
State	0.8	3.9	(0.1)
Foreign	58.9	74.7	27.6
Total current	79.4	125.1	26.1
Non-Current	9.2	3.9	—
Deferred:			
(Decrease) increase in the valuation allowance for deferred tax assets	(0.5)	0.2	(11.3)
Other deferred tax expense (benefit)	63.9	5.3	47.9
Total deferred	63.4	5.5	36.6
Provision for income taxes	$152.0	$134.5	$ 62.7

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Significant components of our deferred tax assets and liabilities were as follows:

(In millions)	December 31, 2008	2007
Deferred tax assets attributable to:		
Accrued expenses	$ 50.4	$ 31.5
Foreign tax credit carryforwards	27.2	24.5
Accrued pension and other postretirement benefits	76.5	22.8
Stock-based compensation	26.6	22.9
Net operating loss carryforwards	11.0	12.6
Inventories	17.1	15.8
Foreign Exchange	52.2	11.1
Other	3.4	1.8
Deferred tax assets	264.4	143.0
Valuation allowance	(2.0)	(2.5)
Deferred tax assets, net of valuation allowance	262.4	140.5
Deferred tax liabilities attributable to:		
Revenue in excess of billings on contracts accounted for under the percentage of completion method	87.7	63.8
Property, plant and equipment, goodwill and other assets	51.4	47.3
Deferred tax liabilities	139.1	111.1
Net deferred tax assets	$123.3	$ 29.4

At December 31, 2008 and 2007, the carrying amount of net deferred tax assets and the related valuation allowance included the impact of foreign currency translation adjustments. Included in our deferred tax assets at December 31, 2008 are U.S. foreign tax credit carryforwards of $27.2 million, which, if not utilized, will begin to expire after 2014. Realization of these deferred tax assets is dependent on the generation of sufficient U.S. taxable income prior to the above date. Based on long-term forecasts of operating results, management believes that it is more likely than not that domestic earnings over the forecast period will result in sufficient U.S. taxable income to fully realize these deferred tax assets. In its analysis, management has considered the effect of foreign deemed dividends and other expected adjustments to domestic earnings that are required in determining U.S. taxable income. Foreign earnings taxable to us as dividends, including deemed dividends for U.S. tax purposes, were $134.3 million, $62.2 million, and $16.9 million in 2008, 2007 and 2006, respectively. Also included in deferred tax assets are tax benefits related to net operating loss carryforwards attributable to foreign entities. If not utilized, these net operating loss carryforwards will begin to expire in 2009. Management believes it is more likely than not that we will not be able to utilize certain of these operating loss carryforwards before expiration; therefore, we have established a valuation allowance against the related deferred tax assets.

By country, current and non-current deferred income taxes included in our consolidated balance sheet at December 31, 2008, were as follows:

	December 31, 2008		
(In millions)	Current asset (liability)	Non-current asset (liability)	Total
United States	$ 58.4	$ 143.1	$201.5
Norway	(75.8)	10.6	(65.2)
Brazil	12.7	(21.1)	(8.4)
Other foreign	4.6	(9.2)	(4.6)
Net deferred tax assets (liabilities)	$ (0.1)	$ 123.4	$123.3

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

(In millions)	Federal, State and Foreign Tax	Accrued Interest and Penalties	Gross Unrecognized Income Tax Benefits	Deferred Income Tax Benefits	Net
Balance at January 1, 2008	$ 18.9	$ 3.5	$ 22.4	$ (2.1)	$20.3
Additions for tax positions related to the current year	—	—	—	—	—
Additions for tax positions related to prior years	9.9	3.1	13.0	(1.3)	11.7
Reductions for tax positions due to settlements	—	—	—	—	—
Reductions due to a lapse of the statute of limitations	—	—	—	—	—
Other reductions for tax positions related to prior years	(0.8)	(0.3)	(1.1)	0.1	(1.0)
Balance at December 31, 2008	28.0	6.3	34.3	(3.3)	31.0
Less tax positions related to temporary differences	(1.3)	—	(1.3)	—	(1.3)
Tax positions that, if recognized, would impact the effective tax rate as of December 31, 2008	$ 26.7	$ 6.3	$ 33.0	$ (3.3)	$29.7

It is our policy to classify interest expense and penalties recognized on underpayments of income taxes as income tax expense. The gross amounts of interest expense and penalties included in unrecognized tax benefits as of January 1 and December 31, 2008 are reflected in the table above.

It is reasonably possible that within twelve months unrecognized tax benefits related to certain tax reporting positions taken in prior periods could decrease by up to $4.7 million, due to either the expiration of the statute of limitations in certain jurisdictions or the resolution of current income tax examinations, or both.

Tax years after 1999, 2004 and 2002 remain subject to examination in Norway, Brazil and the United States, respectively.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The effective income tax rate was different from the statutory U.S. federal income tax rate due to the following:

	Year Ended December 31,		
	2008	2007	2006
Statutory U.S. federal income tax rate	35%	35%	35%
Net difference resulting from:			
Foreign earnings subject to different tax rates	(9)	(5)	(6)
Tax on foreign intercompany dividends and deemed dividends for tax purposes	3	1	2
Net change in unrecognized tax benefits	2	1	—
Net change in valuation allowance	—	—	(6)
Other	(1)	2	3
Total difference	(5)	(1)	(7)
Effective income tax rate	30%	34%	28%

The 2006 provision for income taxes included the reversal of a $12.2 million valuation allowance on deferred tax assets related to our Brazilian operations. Profitability and updated projections for future taxable income in Brazil caused us to change our assessment of the recoverability of deferred tax assets and reverse the valuation allowance established in prior years.

U.S. income taxes have not been provided on undistributed earnings of foreign subsidiaries. The cumulative balance of these undistributed earnings was $571.9 million at December 31, 2008. It is not practicable to determine the amount of applicable taxes that would be incurred if any of these earnings were repatriated.

NOTE 11. PENSIONS AND POSTRETIREMENT AND OTHER BENEFIT PLANS

We have funded and unfunded defined benefit pension plans that together cover substantially all of our U.S. employees. The plans provide defined benefits based on years of service and final average salary. Foreign-based employees are eligible to participate in FMC Technologies-sponsored or government-sponsored benefit plans to which we contribute. Several of the foreign defined benefit pension plans sponsored by us provide for employee contributions; the remaining plans are noncontributory.

We have other postretirement benefit plans covering substantially all of our U.S. employees who were hired prior to January 1, 2003. The postretirement health care plans are contributory; the postretirement life insurance plans are noncontributory.

We have adopted the provisions of SFAS No. 87, “Employers’ Accounting for Pensions,” as amended by 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 No. 158 requires recognition of the funded status of defined benefit postretirement plans as an asset or liability in the consolidated balance sheet and to recognize changes in that funded status in comprehensive income in the year in which the changes occur. SFAS No. 158 also requires measurement of a plan’s assets and its obligations that determine its funded status as of the date of the consolidated balance sheet. We have applied this guidance to our domestic pension and other postretirement benefit plans as well as for many of our non-U.S. plans, including those covering employees in the United Kingdom, Norway, Germany, France, Sweden and Canada. In 2007, we included our defined benefit plans covering employees in Belgium to the pension disclosures. The opening projected benefit obligation and plan assets are reflected in the plan transition caption of the funded status reconciliation. Pension expense measured in compliance with SFAS No. 87 for the other non-U.S. pension plans is not materially different from the locally reported pension expense.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The funded status of our U.S. qualified and nonqualified pension plans, certain foreign pension plans and U.S. postretirement health care and life insurance benefit plans, together with the associated balances recognized in our consolidated financial statements as of December 31, 2008 and 2007, were as follows:

(In millions)	Pensions 2008	Pensions 2007	Other postretirement benefits 2008	Other postretirement benefits 2007
Accumulated benefit obligation	$ 547.1	$755.7		
Projected benefit obligation at January 1	$ 911.7	$841.6	$ 19.7	$ 20.5
Transfer of liability to JBT as a result of the spinoff	(219.6)	—	(6.4)	—
Service cost	33.5	31.1	0.1	—
Interest cost	38.9	48.9	0.7	1.2
Actuarial (gain) loss	17.6	(12.0)	(1.7)	(0.4)
Amendments	—	0.6	—	0.1
Settlement loss	5.4	—	—	—
Plan transition	—	13.2	—	—
Foreign currency exchange rate changes	(86.4)	15.1	—	—
Plan participants' contributions	2.1	3.3	—	0.9
Benefits paid	(33.8)	(30.1)	(1.4)	(2.6)
Projected benefit obligation at December 31	669.4	911.7	11.0	19.7
Fair value of plan assets at January 1	841.8	769.3	—	—
Transfer of assets to JBT as a result of the spinoff	(185.0)	—	—	—
Actual return on plan assets	(166.5)	34.9	—	—
Company contributions	91.7	43.2	1.4	1.7
Plan transition	—	7.8	—	—
Foreign currency exchange rate changes	(73.8)	13.4	—	—
Plan participants' contributions	2.1	3.3	—	0.9
Benefits paid	(33.8)	(30.1)	(1.4)	(2.6)
Fair value of plan assets at December 31	476.5	841.8	—	—
Funded status of the plans (liability) at December 31	$(192.9)	$ (69.9)	$(11.0)	$(19.7)
Other noncurrent assets	$ (1.0)	$ 13.4	$ —	$ —
Current portion of accrued pension and other postretirement benefits	(20.1)	(13.6)	(0.7)	(1.5)
Accrued pension and other postretirement benefits, net of current portion	(171.8)	(39.5)	(10.3)	(10.9)
Net amount recognized in the balance sheet for discontinued operations	—	(30.2)	—	(7.3)
Funded status recognized in the consolidated balance sheets at December 31, 2008 and 2007	$(192.9)	$ (69.9)	$(11.0)	$(19.7)
Amounts recognized in accumulated other comprehensive (income) loss:				
Unrecognized actuarial (gain) loss	$ 296.1	$128.7	$ (0.7)	$ (0.2)
Unrecognized prior service credit	(1.7)	(2.2)	(5.4)	(11.8)
Unrecognized transition asset	(2.0)	(3.3)	—	—
Accumulated other comprehensive (income) loss at December 31	$ 292.4	$123.2	$ (6.1)	$(12.0)
Plans with underfunded or non-funded projected benefit obligation:				
Aggregate projected benefit obligation	$ 669.4	$184.9	$ 11.0	$ 19.7
Aggregate fair value of plan assets	476.5	97.1	—	—
Plans with underfunded or non-funded accumulated benefit obligation:				
Aggregate accumulated benefit obligation	$ 367.7	$ 67.2		
Aggregate fair value of plan assets	260.6	9.1		

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FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes the components of net periodic benefit cost:

(In millions)	Pensions 2008	Pensions 2007	Pensions 2006	Other postretirement benefits 2008	Other postretirement benefits 2007	Other postretirement benefits 2006
Components of net annual benefit cost:						
Service cost	$ 33.5	$ 31.1	$ 25.2	$ 0.1	$ —	$(0.1)
Interest cost	38.9	48.9	42.0	0.7	1.2	1.2
Expected return on plan assets	(49.9)	(62.8)	(53.2)	—	—	—
Settlement cost	8.1	—	—	—	—	—
Amortization of transition asset	(0.6)	(0.6)	(0.6)	—	—	—
Amortization of prior service cost (credit)	0.3	0.5	0.5	(1.4)	(2.5)	(2.6)
Amortization of net actuarial loss (gain)	3.7	9.5	10.2	(0.1)	—	0.1
Net annual benefit cost (income)	$ 34.0	$ 26.6	$ 24.1	$(0.7)	$(1.3)	$(1.4)
Other changes in plan assets and benefit obligations recognized in other comprehensive income:						
Net actuarial loss (gain)	$174.1	$ 8.0		$(0.7)	$(0.7)	
Amortization of net actuarial loss	(3.7)	(9.5)		0.2	—	
Prior service cost	0.9	0.6		4.4	0.1	
Amortization of prior service (cost) credit	(0.3)	(0.5)		2.0	2.5	
Amortization of transition asset	0.6	0.6		—	—	
Total recognized in other comprehensive income	171.6	(0.8)		5.9	1.9	
Total recognized in net periodic benefit cost and other comprehensive income	$205.6	$ 25.8		$ 5.2	$ 0.6	

The estimated net actuarial loss, prior service cost credit, and transition asset credit for the defined benefit pension plans that will be amortized from accumulated other comprehensive income into net periodic benefit cost over the next fiscal year are $15.5 million, $0.2 million and $0.5 million, respectively. The estimated prior service benefit for the other postretirement benefit plans that will be amortized from accumulated other comprehensive income into net periodic benefit cost over the next fiscal year is $1.3 million. Prior service costs and the unrecognized actuarial losses are amortized on a straight-line basis over the average remaining service period of employees eligible to receive benefits under the plan.

Key assumptions—The following weighted-average assumptions were used to determine the benefit obligations:

	Pensions 2008	Pensions 2007	Other postretirement benefits 2008	Other postretirement benefits 2007
Discount rate	5.92%	6.02%	6.10%	6.50%
Rate of compensation increase	4.04%	4.00%	—	—

The weighted average discount rate for pension expense dropped from 6.02% in 2007 to 5.92% in 2008, which resulted from a decrease in the discount rates used in determining the pension benefits principally in the U.S. plans. The discount rate used for determining the U.K. pension benefit obligations grew from 5.61% in 2007 to 5.95% in 2008. The discount rate used in determining U.S. pension benefit obligations decreased from 6.50% in 2007 to 6.10% in 2008.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following weighted-average assumptions were used to determine net periodic benefit cost:

	Pensions			Other postretirement benefits		
	2008	2007	2006	2008	2007	2006
Discount rate	6.02%	5.62%	5.46%	6.50%	6.00%	5.80%
Rate of compensation increase	4.00%	3.85%	3.58%	—	—	—
Expected rate of return on plan assets	8.21%	8.46%	8.57%	—	—	—

Our estimate of expected rate of return on plan assets is based primarily on the historical performance of plan assets, current market conditions and long-term growth expectations.

In 2008 we moved to a fully insured postretirement medical plan in which premium costs are paid by the employee. The disclosed postretirement medical obligation (included in other postretirement benefits) reflects a flat dollar subsidy paid to retirees hired prior to 2003 that offsets employee premiums to the plan. This subsidy will not be indexed for inflation or expected healthcare cost increases.

Plan assets—Our pension plan asset allocation, by asset category, was as follows:

	December 31,	
(Percent of plan assets)	2008	2007
Equity securities	69.6%	83.9%
Insurance contracts	12.3	11.5
Cash	3.1	3.1
Debt securities	12.4	0.3
Other	2.6	1.2
Total	100.0%	100.0%

Our pension investment strategy emphasizes maximizing returns, consistent with ensuring that sufficient assets are available to meet liabilities, and minimizing corporate cash contributions. Investment managers are retained to invest 100% of discretionary funds and are provided a high level of freedom in asset allocation. Targets include: exceeding relevant equity indices, performing in the top quartile of all large U.S. pension plans and obtaining an absolute rate of return at least equal to the discount rate used to value plan liabilities.

Contributions—We expect to contribute approximately $34.7 million to our pension and other postretirement benefit plans in 2009. The pension contributions will be primarily for the U.K. and Norway qualified pension plans. Additionally, the expected contribution amount includes the funding for projected lump sum payouts in our non-qualified pension plans. All of the contributions are expected to be in the form of cash. In 2008 and 2007, we contributed $91.7 million and $43.2 million to the pension plans, respectively, which included $61.8 million and $15.0 million, respectively, to the U.S. qualified pension plan.

Estimated future benefit payments—The following table summarizes expected benefit payments from our various pension and postretirement benefit plans through 2017. Actual benefit payments may differ from expected benefit payments.

(In millions)	Pensions	Other postretirement benefits
2009	$ 37.3	$ 0.7
2010	21.2	0.8
2011	26.5	0.9
2012	33.0	0.9
2013	31.1	1.0
2014-2018	173.8	5.1

Savings Plans—The FMC Technologies, Inc. Savings and Investment Plan, a qualified salary reduction plan under Section 401(k) of the Internal Revenue Code, is a defined contribution plan. Additionally, we have a non-qualified deferred compensation plan, the FMC Technologies, Inc. Non-Qualified Savings and Investment Plan ("Non-Qualified Plan"), which allows certain highly compensated employees the option to defer the receipt of a portion of their salary. We match a portion of the participants' deferrals to both plans.

Participants in the Non-Qualified Plan earn a return based on hypothetical investments in the same options as our 401(k) plan, including FMC Technologies stock. Changes in the market value of these participant investments are reflected as an adjustment to the deferred compensation liability with an offset to other income (expense), net. As of December 31, 2008 and 2007, our liability for the Non-Qualified Plan was $20.5 million and $38.0 million, respectively, and was recorded in other non-current liabilities. We hedge the financial impact of changes in the participants' hypothetical investments by purchasing the investments that the participants have chosen. With the exception of FMC Technologies stock, which is maintained at its cost basis, changes in the fair value of these investments are recognized as an offset to other income (expense), net. As of December 31, 2008 and 2007, we had investments for the Non-Qualified Plan totaling $17.6 million and $28.3 million, respectively, at fair market value and FMC Technologies stock held in trust of $6.3 million and $5.4 million, respectively, at its cost basis.

We recognized expense of $10.6 million, $9.6 million and $8.3 million, for matching contributions to these plans in 2008, 2007 and 2006, respectively.

NOTE 12. STOCK-BASED COMPENSATION

We sponsor a stock-based compensation plan, which is described below, and have granted awards primarily in the form of nonvested stock awards (also known as restricted stock in the plan document) and stock options. The compensation expense for awards under the plan for each of the years in the three year period ended December 31, 2008 is as follows:

(In millions)	2008	2007	2006
Stock-based compensation expense			
Restricted stock	$26.2	$19.4	$14.1
Stock options	—	—	1.2
Other	1.8	1.7	1.2
Total stock-based compensation expense	$28.0	$21.1	$16.5
Income tax benefits related to stock-based compensation expense	$10.4	$ 7.8	$ 6.4

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Stock-based compensation expense is recognized over the lesser of the stated vesting period (three or four years) or the period until the employee reaches age 62 (the retirement eligible age under the plan). As of December 31, 2008, a portion of the stock-based compensation expense related to outstanding awards remains to be recognized in future periods. The compensation expense related to nonvested awards yet to be recognized totaled $22.8 million for restricted stock. These costs are expected to be recognized over a weighted average period of 1.2 years.

Incentive compensation and stock plan—The Amended and Restated FMC Technologies, Inc. Incentive Compensation and Stock Plan (the "Plan") provides certain incentives and awards to officers, employees, directors and consultants of FMC Technologies or its affiliates. The Plan allows our Board of Directors (the "Board") to make various types of awards to non-employee directors and the Compensation Committee (the "Committee") of the Board to make various types of awards to other eligible individuals. Awards include management incentive awards, common stock, stock options, stock appreciation rights, restricted stock and stock units. All awards are subject to the Plan's provisions.

Under the Plan, 24.0 million shares of our common stock were authorized for awards. These shares are in addition to shares previously granted by FMC Corporation and converted into approximately 9.0 million shares of our common stock. As of December 31, 2008, 3.6 million shares are reserved to satisfy existing awards and 12.2 million shares are available for future awards.

Management incentive awards may be awards of cash, common stock options, restricted stock or a combination thereof. Grants of common stock options may be incentive and/or nonqualified stock options. Under the plan, the exercise price for options cannot be less than the market value of our common stock at the date of grant. Options vest in accordance with the terms of the award as determined by the Committee, which is generally after three years of service, and expire not later than 10 years after the grant date. Restricted stock grants specify any applicable performance goals, the time and rate of vesting and such other provisions as determined by the Committee. Restricted stock grants generally vest after three to four years of service. Additionally, most awards vest immediately upon a change of control as defined in the Plan agreement.

Stock-based compensation awards to non-employee directors consist of stock units, restricted stock and common stock options. Awards to non-employee directors generally vest on the date of our annual stockholder meeting following the date of grant. Stock options are not exercisable, and restricted stock and stock units are not issued, until a director ceases services to the Board. At December 31, 2008, outstanding awards to active and retired non-employee directors included 11 thousand vested stock options and 436 thousand stock units.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Restricted stock—

A summary of the nonvested restricted stock awards as of December 31, 2008 and changes during the year is presented below:

(Number of restricted stock shares in thousands)	Shares	Weighted-average grant date fair value
Nonvested at December 31, 2007 **	3,302	$ 23.19
Granted **	527	$ 51.01
Vested	(1,143)	$ 15.74
Forfeited	(15)	$ 30.77
Cancelled *	(177)	$ 30.51
Nonvested at December 31, 2008	2,494	$ 31.92

* At the time of the spin-off of JBT, all outstanding restricted stock shares awarded in 2007 and held by employees of JBT were cancelled.

** Awards granted prior to July 31, 2008 have been adjusted to reflect the impact of the dividend of JBT common stock.

In 2008, we granted time-based restricted stock awards, as well as awards with performance and market conditions. The vesting period for these awards is three years from the grant date.

For current year performance-based awards, the payout was dependent upon our performance relative to a peer group of companies with respect to EBITDA growth and return on investment for the year ending December 31, 2008. Based on results for the performance period, the payout will be 186 thousand shares at the vesting date in January 2011. Compensation cost has been measured for 2008 based on the actual outcome of the performance conditions.

For current year market-based awards, the payout was contingent upon our performance relative to the same peer group of companies with respect to total shareholder return for the year ending December 31, 2008. Based on results for the performance period, the payout will be 93 thousand shares at the vesting date in January 2011. Compensation cost for these awards has been calculated using the grant date fair market value, as estimated using a Monte Carlo simulation.

The following summarizes values for restricted stock activity in each of the years in the three year period ended December 31, 2008:

	2008	2007	2006
Weighted average grant date fair value of restricted stock awards granted	$51.01	$31.44	$23.13
Fair value of restricted stock vested (in millions)	$ 62.9	$ 33.4	$ 18.3

On January 2, 2009, restricted stock awards vested and approximately 931 thousand shares were issued to employees.

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Stock options—

There were no options granted, forfeited or expired during the year ended December 31, 2008.

The following shows stock option activity for the year ended December 31, 2008:

(Number of stock options in thousands, intrinsic value in millions)	Shares under option	Weighted-average exercise price	Weighted-average remaining contractual term	Aggregate Intrinsic Value
Outstanding at December 31, 2007 **	1,362	$ 9.92		
Exercised **	(497)	$ 9.56		
Cancelled *	(51)	$ 9.98		
Outstanding and exercisable at December 31, 2008	814	$ 10.14	4.1	$ 11.1

* At the time of the spin-off of JBT, all outstanding stock options to purchase our common stock and held by employees of JBT were cancelled.
** Awards granted prior to July 31, 2008 have been adjusted to reflect the impact of the dividend of JBT common stock.

The aggregate intrinsic value reflects the value to the option holders, or the difference between the market price as of December 31, 2008 and the exercise price of the option, which would have been received by the option holders had all options been exercised as of that date. While the intrinsic value is representative of the value to be gained by the option holders, this value is not indicative of compensation expense recorded by us. Compensation expense on stock options was calculated on the date of grant using the fair value of the options, as determined by a Black-Scholes option pricing model and the number of options granted, reduced by estimated forfeitures.

The intrinsic value of options exercised for each of the years in the three year period ended December 31, 2008 was $26.9 million, $59.5 million, and $51.0 million, respectively.

APIC pool—

In November 2005, the FASB issued Staff Position FAS 123R-3, “Transition Election Related to Accounting for the Tax Effects of Share Based Payment Awards,” which allowed a one-time election to adopt one of two acceptable methodologies for calculating the initial additional paid in capital (“APIC”) pool. During the third quarter of 2006, we elected to adopt the transition guidance for the APIC pool in paragraph 81 of SFAS No. 123R. The APIC pool reflects the excess tax benefits generated upon stock option exercise or restricted stock issuance when our allowable income tax deduction for the award exceeds the compensation expense recorded for book purposes. Subsequent to adoption, the APIC pool will be increased by tax benefits from stock-based compensation and decreased by tax losses caused when the recorded stock-based compensation for book purposes exceeds the allowable income tax deduction. As of December 31, 2008, our APIC pool totaled $71.7 million.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

NOTE 13. STOCKHOLDERS' EQUITY

Capital stock—The following is a summary of our capital stock activity during each of the years in the three-year period ended December 31, 2008:

(Number of shares in thousands)	Common stock issued	Common stock held in employee benefit trust	Common stock held in treasury
December 31, 2005	140,012	256	3,502
Stock awards	2,736	—	(548)
Treasury stock purchases	—	—	5,038
Net stock sold from employee benefit trust	—	(30)	—
December 31, 2006	142,748	226	7,992
Stock awards	411	—	(2,204)
Treasury stock purchases	—	—	7,882
Net stock sold from employee benefit trust	—	(56)	—
December 31, 2007	143,159	170	13,670
Stock awards	—	—	(1,254)
Treasury stock purchases	—	—	5,703
Net stock sold from employee benefit trust	—	(48)	—
December 31, 2008	143,159	122	18,119

The plan administrator of the Non-Qualified Plan purchases shares of our common stock on the open market. Such shares are placed in a trust owned by FMC Technologies.

In February 2005, we announced plans to begin repurchasing shares subject to our four million share authorization by the Board of Directors. In February 2006, the Board of Directors approved the repurchase of an additional 10 million shares of our issued and outstanding common stock. In the year ended December 31, 2006, we repurchased 5.0 million shares for $142.5 million. In February 2007, the Board of Directors approved the repurchase of an additional 16 million shares of our issued and outstanding common stock. There were 7.9 million shares repurchased for $287.4 million in the year ended December 31, 2007. In July 2008, the Board of Directors authorized the repurchase of $95.0 million of our issued and outstanding common stock in addition to our prior authorization to repurchase up to 30 million shares. We completed the share repurchases under the $95.0 million program during the third quarter of 2008. There were 5.7 million shares repurchased for $324.0 million in the year ended December 31, 2008. We intend to hold repurchased shares in treasury for general corporate purposes, including issuances under our employee stock plans. The treasury shares are accounted for using the cost method.

No cash dividends were paid on our common stock in 2008, 2007 or 2006.

On June 7, 2001, our Board of Directors declared a dividend distribution to each recordholder of common stock of one Preferred Share Purchase Right for each share of common stock outstanding at that date. Each right entitles the holder to purchase, under certain circumstances related to a change in control of FMC Technologies, one one-hundredth of a share of Series A junior participating preferred stock, without par value, at a price of $95 per share (subject to adjustment), subject to the terms and conditions of a Rights Agreement dated June 5, 2001. The rights expire on June 6, 2011, unless redeemed by us at an earlier date. The redemption price of $0.01 per right is subject to adjustment to reflect stock splits, stock dividends or similar transactions. We have reserved 800,000 shares of Series A junior participating preferred stock for possible issuance under the agreement.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accumulated other comprehensive income (loss)—Accumulated other comprehensive income (loss) consisted of the following:

	December 31,	
(In millions)	**2008**	**2007**
Cumulative foreign currency translation adjustments	$(132.9)	$ 3.8
Cumulative deferral of hedging gains (losses), net of tax of $48.4 million and $16.4 million, respectively	(84.9)	25.3
Cumulative deferral of pension and other postretirement benefit losses, net of tax of $97.6 million and $34.9 million, respectively	(188.7)	(76.3)
Cumulative unrealized losses on investments, net of tax of $0.8 million at December 31, 2008	(1.9)	—
Accumulated other comprehensive loss	$(408.4)	$(47.2)

Accumulated other comprehensive loss at December 31, 2008 was reduced by $2.4 million of cumulative foreign currency translation adjustments and $25.5 million of pension and other postretirement benefit losses distributed to JBT as a result of the spin-off on July 31, 2008.

NOTE 14. DERIVATIVE FINANCIAL INSTRUMENTS AND RISK MANAGEMENT

Derivative financial instruments—We hold derivative financial instruments for the purpose of hedging the risks of certain identifiable and anticipated transactions. In general, the types of risks hedged are those relating to the variability of future earnings and cash flows caused by movements in foreign currency exchange rates and interest rates. We hold the following types of derivative instruments:

Foreign exchange rate forward contracts—The purpose of this instrument is to hedge the risk of changes in future cash flows of anticipated purchase or sale commitments denominated in foreign currencies.

Foreign exchange rate instruments embedded in purchase and sale contracts—The purpose of this instrument is to match offsetting currency payments for particular projects, or comply with government restrictions on the currency used to purchase goods in certain countries.

We manufacture and sell our products in a number of countries throughout the world and, as a result, are exposed to movements in foreign currency exchange rates. Our major foreign currency exposures involve the markets in Western and Eastern Europe, South America, Asia, and Canada. The purpose of our foreign currency hedging activities is to manage the volatility associated with anticipated foreign currency purchases and sales created in the normal course of business. We primarily utilize forward exchange contracts with maturities of less than three years.

Our policy is to hold derivatives only for the purpose of hedging risks and not for trading purposes where the objective is solely to generate profit. Generally, we enter into hedging relationships such that changes in the fair values or cash flows of items and transactions being hedged are expected to be offset by corresponding changes in the fair value of the derivatives.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table of all outstanding derivative instruments is based on estimated fair value amounts that have been determined using available market information and commonly accepted valuation methodologies. Accordingly, the estimates presented may not be indicative of potential gains or losses on these agreements.

	December 31, 2008		December 31, 2007	
(In millions)	Short Term	Long Term	Short Term	Long Term
Assets	$354.6	$142.4	$154.5	$105.4
Liabilities	$444.4	$175.8	$106.9	$ 69.5

Hedge ineffectiveness and the portion of cash flow hedges excluded from the assessment of hedge effectiveness were gains of $7.0 million and $3.1 million and a loss of $1.9 million for the years ended December 31, 2008, 2007 and 2006, respectively. Gains and losses are recorded in revenue and cost of sales based on the transaction hedged on the consolidated statements of income. Revenue recorded from gains and losses are reported in other revenue in the reconciliation of segment operating profit to income before income taxes.

Discontinued hedging relationships resulted in a loss of $19.6 million and gains of $7.8 million, and $3.3 million for the years ending December 31, 2008, 2007 and 2006, respectively. These gains and loses are recorded in cost of sales on the consolidated statements of income and in segment operating profit in the reconciliation of segment operating profit to income before income taxes.

Cash flow hedges of forecasted transactions, net of tax, resulted in accumulated other comprehensive loss of $84.9 million and accumulated other comprehensive income of $25.3 million at December 31, 2008 and 2007, respectively. We expect to transfer approximately $59.8 million of that amount to earnings during 2009 when the forecasted offsetting hedged transactions actually occur. All forecasted transactions currently being hedged are expected to occur by 2012.

At times we enter into derivative contracts, such as forwards, options, or collars, to create a hedge against exchange rate exposure for foreign currency movements. The exposures include assets and liabilities included on our balance sheet denominated in a currency other than the reporting unit's functional currency, embedded derivatives, and fixed contracts bid in a foreign currency. These derivatives do not qualify as, nor are they designated as, hedges and therefore gains or losses for the period are recognized in earnings immediately. The gains and losses, net of remeasurement of assets and liabilities, recorded in earnings for instruments not designated as hedging instruments were a loss of $15.8 million, a gain of $27.9 million and a loss of $7.1 million for the years ending December 31, 2008, 2007 and 2006, respectively. These gains and losses are recorded in other income (expense), net on the consolidated statements of income and in other expense, net in the reconciliation of segment operating profit to income before income taxes.

Fair value disclosures—The carrying amounts of cash and cash equivalents, trade receivables, accounts payable, short-term debt, commercial paper, and debt associated with revolving credit facilities, as well as amounts included in other current assets and other current liabilities that meet the definition of financial instruments, approximate fair value because of their short-term maturities. Investments and derivative financial instruments are carried at fair value, determined using available market information. See Note 15 for fair value disclosure of investments and derivative financial instruments.

Credit risk—By their nature, financial instruments involve risk including credit risk for non-performance by counterparties. Financial instruments that potentially subject us to credit risk primarily consist of trade receivables and derivative contracts. We manage the credit risk on financial instruments by transacting only with financially secure counterparties, requiring credit approvals and credit limits, and monitoring counterparties' financial condition. Our maximum exposure to credit loss in the event of non-performance by the counterparty is limited to the amount drawn and outstanding on the financial instrument. Allowances for losses are established based on collectability assessments. See Note 15 for additional discussion of credit risk as it relates to derivative contracts.

NOTE 15. FAIR VALUE OF FINANCIAL ASSETS AND LIABILITIES

In September 2006, the FASB issued SFAS No. 157, "Fair Value Measurements," which defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles, and expands disclosures about fair value measurements. In February 2008, the FASB issued FASB Staff Position No. FAS 157-2, "Effective Date of FASB Statement No. 157," which provides a one year deferral of the effective date of SFAS No. 157 for non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually). We adopted SFAS No. 157 on January 1, 2008 with respect to financial assets and financial liabilities that are measured at fair value within the consolidated financial statements and deferred the adoption for non-financial assets and non-financial liabilities until January 1, 2009. Accordingly, the provisions of SFAS No. 157 were not applied to long-lived assets, assets and liabilities held for sale, goodwill and other intangible assets measured for impairment testing purposes.

In February 2007, the FASB issued SFAS No. 159, "The Fair Value Option for Financial Assets and Financial Liabilities—including an amendment of SFAS No. 115." SFAS No. 159 permits entities to measure eligible assets and liabilities at fair value. Unrealized gains and losses on items for which the fair value option has been elected are reported in earnings. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. We adopted SFAS No. 159 on January 1, 2008 and did no elect to apply the fair value method to any eligible assets or liabilities at that time.

The fair value framework requires the categorization of assets and liabilities into three levels based upon the assumptions (inputs) used to price the assets or liabilities. Level 1 provides the most reliable measure of fair value, whereas Level 3 generally requires significant management judgment. The three levels are defined as follows:

- *Level 1*: Unadjusted quoted prices in active markets for identical assets and liabilities.
- *Level 2*: Observable inputs other than those included in Level 1. For example, quoted prices for similar assets or liabilities in active markets or quoted prices for identical assets or liabilities in inactive markets.
- *Level 3*: Unobservable inputs reflecting management's own assumptions about the inputs used in pricing the asset or liability.

Financial assets and financial liabilities measured at fair value on a recurring basis are as follows:

(In millions)	Dec 31, 2008	Level 1	Level 2	Level 3
Assets				
Investments	$ 35.1	$35.1	$ —	$ —
Derivatives	497.0	—	497.0	—
Total assets	$ 532.1	$35.1	$497.0	$ —
Liabilities				
Derivatives	$ 620.2	$ —	$620.2	$ —

Fair value measurements for assets or liabilities are valued based on quoted prices in public markets that we have the ability to access. We use the income approach as the valuation technique to measure the fair value of foreign currency derivative instruments on a recurring basis. This approach calculates the present value of the future cash flow by measuring the change from the derivative contract rate and the published market indicative currency rate, multiplied by the contract notional values. Credit risk is then incorporated by adjusting the derivative asset value by the amount calculated by multiplying the present value of the portfolio by the counterparty's published credit spread. Portfolios in a liability position are adjusted by the same calculation; however a spread representing our credit spread is used. Our credit spread and the credit spread of other counterparties not publicly available are approximated by using the spread of similar companies in the same industry, with the same credit rating, and of similar size. The derivative asset values presented in the preceding table were reduced by $1.2 million, and the derivative liability values reduced by $5.0 million to approximate fair value including credit risk.

NOTE 16. RELATED PARTY TRANSACTIONS

John Bean Technologies Corporation—On July 12, 2008, our Board of Directors approved the spin-off of 100% of our FoodTech and Airport Systems businesses to our shareholders. The spin-off was accomplished on July 31, 2008 through a tax-free dividend of all outstanding shares of JBT, which is now an independent public company traded on the New York Stock Exchange (symbol JBT).

We entered into certain agreements which defined key provisions related to the spin-off and the relationship between the two companies after the spin-off, including, among others, a separation and distribution agreement between FMC Technologies and JBT (the "Separation and Distribution Agreement") and a tax sharing agreement between FMC Technologies and JBT (the "Tax Sharing Agreement"). The Separation and Distribution Agreement required us to contribute certain business segments and their associated assets and liabilities to JBT. As a result of the contribution, we have no interest in JBT's assets and business and, subject to certain exceptions described below, generally have no obligation with respect to JBT's liabilities. Similarly, JBT has no interest in our assets and generally has no obligation with respect to our liabilities related to retained businesses after the distribution. We generally made no representations or warranties as to the assets, businesses or liabilities transferred or assumed as part of the contribution, and generally made the transfers on an "as is, where is" basis. JBT agreed to cause us to be released from all FMC Technologies obligations to guarantee or otherwise support any liabilities or obligations of JBT not later than July 31, 2010. JBT agreed to reimburse and otherwise indemnify and hold us harmless for the full amount of all payments made or products or services delivered to third parties under any guarantee not terminated prior to July 31, 2008.

The Tax Sharing Agreement sets forth the responsibilities of the parties with respect to, among other things, liabilities for federal, state, local and foreign taxes for periods before and including the spin-off, the preparation and filing of tax returns for such periods, and disputes with taxing authorities regarding taxes for such periods. The Tax Sharing Agreement also provides that JBT will indemnify us for any tax liability we may incur as a result of any action taken by JBT after the spin-off which causes the distribution to not qualify as tax-free for U.S. federal income tax purposes under the terms of the private letter ruling received from the IRS. We will indemnify JBT against any tax liability in the case any action taken by us causes the distribution to not qualify as tax-free.

FMC Corporation—FMC Technologies was a subsidiary of FMC Corporation until the distribution of FMC Technologies' common stock by FMC Corporation, which was completed on December 31, 2001.

In June 2001, FMC Corporation contributed to us substantially all of the assets and liabilities of the businesses that comprise FMC Technologies (the "Separation"). FMC Technologies and FMC Corporation entered into certain agreements which defined key provisions related to the Separation and the ongoing relationship between the two companies after the Separation. These agreements included a Separation and Distribution Agreement ("SDA") and a Tax Sharing Agreement, which provided that FMC Technologies and FMC Corporation would make payments between them as appropriate to properly allocate tax liabilities for pre-Separation periods.

As parties to the SDA, FMC Corporation and FMC Technologies each indemnify the other party from liabilities arising from their respective businesses or contracts, from liabilities arising from breach of the SDA, from certain claims made prior to our spin-off from FMC Corporation, and for claims related to discontinued operations (Note 18).

CDS (Peledimia)—The consideration provided in 2007 for the acquisition of the CDS minority interest (Note 4) included a note payable for 6.8 million Euros, or $9.9 million. The payee was owned by a member of CDS management and thus was considered a related party. The note was payable in two installments scheduled for 2009 and 2011. The member of CDS management voluntarily terminated employment during 2008 and no further consideration related to continued employment is required.

NOTE 17. WARRANTY OBLIGATIONS

We provide warranties of various lengths and terms to certain of our customers based on standard terms and conditions and negotiated agreements. We provide for the estimated cost of warranties at the time revenue is recognized for products where reliable, historical experience of warranty claims and costs exists. We also provide warranty liability when additional specific obligations are identified. The obligation reflected in other current liabilities in the consolidated balance sheets is based on historical experience by product and considers failure rates and the related costs in correcting a product failure. Warranty cost and accrual information is as follows:

(In millions)	2008	2007
Balance at beginning of year	$ 12.4	$ 11.1
Expenses for new warranties	18.3	16.0
Adjustments to existing accruals	(6.9)	(2.5)
Claims paid	(10.3)	(12.2)
Balance at end of year	$ 13.5	$ 12.4

NOTE 18. COMMITMENTS AND CONTINGENT LIABILITIES

Commitments—We lease office space, manufacturing facilities and various types of manufacturing and data processing equipment. Leases of real estate generally provide for payment of property taxes, insurance and repairs by us. Substantially all leases are classified as operating leases for accounting purposes. Rent expense under operating leases amounted to $72.6 million, $59.8 million and $46.8 million in 2008, 2007 and 2006, respectively.

Minimum future rental payments under noncancelable operating leases amounted to $239.6 million as of December 31, 2008, and are payable as follows: $37.0 million in 2009, $32.8 million in 2010, $28.3 million in 2011, $22.7 million in 2012, $20.1 million in 2013 and $98.7 million thereafter. Minimum future rental payments to be received under noncancelable subleases totaled $6.6 million at December 31, 2008.

Contingent liabilities associated with guarantees—In the ordinary course of business with customers, vendors and others, we issue standby letters of credit, performance bonds, surety bonds and other guarantees. These financial instruments, which totaled $755.7 million at December 31, 2008, represented guarantees of our future performance. We also have provided $27.7 million of bank guarantees and letters of credit to secure a portion of our existing financial obligations. The majority of these financial instruments expire within two years; we expect to replace them through the issuance of new or the extension of existing letters of credit and surety bonds.

We are the named guarantor on certain performance bonds totaling $131.5 million at December 31, 2008, issued by our former subsidiary, JBT; however, we are fully indemnified by JBT pursuant to the terms and conditions of the Separation and Distribution Agreement, dated July 31, 2008, between FMC Technologies and JBT. Management does not expect any of these financial instruments to result in losses that if incurred, would have a material adverse effect on our consolidated financial position, results of operations or cash flows.

Management believes that the ultimate resolution of our known contingencies will not materially affect our consolidated financial position or results of operations.

Contingent liabilities associated with legal matters—We are named defendants in a number of multi-defendant, multi-plaintiff tort lawsuits. Under the SDA with FMC Corporation, which contains key provisions relating to our 2001 spin-off from FMC Corporation, FMC Corporation is required to indemnify us for certain claims made prior to the spin-off, as well as for other claims related to discontinued operations. We expect that FMC Corporation will bear responsibility for the majority of these claims. Claims of this nature have also been asserted subsequent to the spin-off. While the ultimate responsibility for all of these claims cannot yet be determined due to lack of identification of the products or premises involved, we also expect that FMC Corporation will bear responsibility for a majority of these claims initiated subsequent to the spin-off.

While the results of litigation cannot be predicted with certainty, management believes that the most probable, ultimate resolution of these matters will not have a material adverse effect on our consolidated financial position or results of operations and cash flows.

NOTE 19. BUSINESS SEGMENTS

Our determination of our reportable segments was made on the basis of our strategic business units and the commonalities among the products and services within each segment, and corresponds to the manner in which our management reviews and evaluates operating performance. We have combined certain similar operating segments that meet applicable criteria established under SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information."

Our reportable segments are:

- Energy Production Systems—designs and manufactures systems and provides services used by oil and gas companies involved in land and offshore, particularly deepwater, exploration and production of crude oil and gas.
- Energy Processing Systems—designs, manufactures and supplies technologically advanced high pressure valves and fittings for oilfield service customers; also manufactures and supplies liquid and gas measurement and transportation equipment and systems to customers involved in the production, transportation and processing of crude oil, natural gas and petroleum-based refined products.

Total revenue by segment includes intersegment sales, which are made at prices approximating those that the selling entity is able to obtain on external sales. Segment operating profit is defined as total segment revenue less segment operating expenses. The following items have been excluded in computing segment operating profit: corporate staff expense, net interest income (expense) associated with corporate debt facilities, income taxes, and other expense, net.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Segment revenue and segment operating profit

	Year Ended December 31,		
(In millions)	2008	2007	2006
Revenue:			
Energy Production Systems (1)	$3,670.7	$2,882.2	$2,249.5
Energy Processing Systems	883.2	767.7	672.3
Other revenue (2) and intercompany eliminations	(3.0)	(1.0)	(6.4)
Total revenue	$4,550.9	$3,648.9	$2,915.4
Income before income taxes:			
Segment operating profit:			
Energy Production Systems	$ 420.7	$ 287.9	$ 191.2
Energy Processing Systems	165.5	142.5	100.9
Total segment operating profit	586.2	430.4	292.1
Corporate items:			
Corporate expense (3)	(37.5)	(35.1)	(32.9)
Other revenue (2) and other (expense), net (4)	(42.3)	9.1	(27.3)
Net interest expense	(1.5)	(9.3)	(6.7)
Total corporate items	(81.3)	(35.3)	(66.9)
Income before income taxes	504.9	395.1	225.2
Provision for income taxes	152.0	134.5	62.7
Income from continuing operations	352.9	260.6	162.5
Income from discontinued operations, net of tax	8.4	42.2	113.8
Net income	$ 361.3	$ 302.8	$ 276.3

(1) We have one customer in our Energy Production Systems segment that comprises approximately 19% and 10% of our consolidated revenue for the years ended December 31, 2008 and 2007, respectively. No customer accounted for more than 10% of our consolidated revenue in the year ended December 31, 2006.

(2) Other revenue comprises certain unrealized gains and losses on derivative instruments related to unexecuted sales contracts.

(3) Corporate expense primarily includes corporate staff expenses.

(4) Other expense, net, generally includes stock-based compensation, other employee benefits, LIFO adjustments, certain foreign exchange gains and losses, and the impact of unusual or strategic transactions not representative of segment operations.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Segment operating capital employed and segment assets

(In millions)	December 31, 2008	December 31, 2007
Segment operating capital employed (1):		
Energy Production Systems	$ 917.2	$ 676.9
Energy Processing Systems	243.0	243.7
Intercompany eliminations	(0.1)	—
Total segment operating capital employed	1,160.1	920.6
Segment liabilities included in total segment operating capital employed (2)	1,493.7	1,303.8
Corporate (3)	932.5	452.9
Assets of discontinued operations	—	533.8
Total assets	$3,586.3	$3,211.1
Segment assets:		
Energy Production Systems	$2,242.1	$1,834.4
Energy Processing Systems	413.7	392.6
Intercompany eliminations	(2.0)	(2.6)
Total segment assets	2,653.8	2,224.4
Corporate (3)	932.5	452.9
Assets of discontinued operations	—	533.8
Total assets	$3,586.3	$3,211.1

(1) FMC Technologies' management views segment operating capital employed, which consists of assets, net of its liabilities, as the primary measure of segment capital. Segment operating capital employed excludes debt, pension liabilities, income taxes and LIFO inventory reserves.

(2) Segment liabilities included in total segment operating capital employed consist of trade and other accounts payable, advance payments and progress billings, accrued payroll and other liabilities.

(3) Corporate includes cash, LIFO inventory reserves, deferred income tax balances, property, plant and equipment not associated with a specific segment, pension assets and the fair value of derivatives.

FMC TECHNOLOGIES, INC. AND CONSOLIDATED SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Geographic segment information

Geographic segment sales were identified based on the location where our products and services were delivered. Geographic segment long-lived assets include property, plant and equipment, net; goodwill; intangible assets, net; and certain other non-current assets.

	Year Ended December 31,		
(In millions)	2008	2007	2006
Revenue (by location of customer):			
United States	$ 1,110.1	$ 908.5	$ 756.5
Norway	1,068.1	739.2	427.1
All other countries	2,372.7	2,001.2	1,731.8
Total revenue	$ 4,550.9	$ 3,648.9	$ 2,915.4

	December 31,		
(In millions)	2008	2007	2006
Long-lived assets:			
United States	$ 224.3	$ 172.0	$ 160.2
Norway	126.1	139.2	57.2
Brazil	90.7	105.4	75.8
Netherlands	126.2	121.6	56.3
All other countries	158.1	177.5	145.7
Total long-lived assets	$ 725.4	$ 715.7	$ 495.2

Other business segment information

	Capital expenditures Year Ended December 31,			Depreciation and amortization Year Ended December 31,			Research and development expense Year Ended December 31,		
(In millions)	2008	2007	2006	2008	2007	2006	2008	2007	2006
Energy Production Systems	$ 153.7	$ 162.1	$ 94.8	$ 60.7	$ 49.4	$ 36.3	$ 38.4	$ 34.9	$ 26.9
Energy Processing Systems	7.2	12.4	16.2	9.6	10.0	8.3	6.9	5.9	6.1
Corporate	4.1	5.1	4.6	2.3	2.4	3.3	—	—	—
Total	$ 165.0	$ 179.6	$ 115.6	$ 72.6	$ 61.8	$ 47.9	$ 45.3	$ 40.8	$ 33.0

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NOTE 20. QUARTERLY INFORMATION (UNAUDITED)

(In millions, except per share data and common stock prices)	2008 4th Qtr.	2008 3rd Qtr.	2008 2nd Qtr.	2008 1st Qtr.	2007 4th Qtr.	2007 3rd Qtr.	2007 2nd Qtr.	2007 1st Qtr.
Revenue	$ 1,205.1	$ 1,127.6	$ 1,178.1	$ 1,040.1	$ 1,070.5	$ 879.4	$ 911.4	$ 787.6
Cost of sales	958.4	888.2	934.3	842.2	858.5	704.5	733.6	625.3
Income from continuing operations	93.9	92.4	98.2	68.4	84.2	65.3	59.7	51.4
Income (loss) from discontinued operations	(2.6)	(9.7)	7.6	13.1	5.7	13.4	13.2	9.9
Net income	$ 91.3	$ 82.7	$ 105.8	$ 81.5	$ 89.9	$ 78.7	$ 72.9	$ 61.3
Basic earnings per share (1)	$ 0.73	$ 0.65	$ 0.82	$ 0.63	$ 0.69	$ 0.60	$ 0.56	$ 0.46
Diluted earnings per share (1)	$ 0.72	$ 0.64	$ 0.81	$ 0.62	$ 0.68	$ 0.59	$ 0.55	$ 0.45
Common stock price:								
High	$ 44.88	$ 77.98	$ 80.86	$ 64.88	$ 66.86	$ 58.48	$ 39.62	$ 35.34
Low	$ 20.34	$ 43.10	$ 57.83	$ 46.11	$ 54.12	$ 40.83	$ 34.63	$ 27.76

(1) Basic and diluted EPS are computed independently for each of the periods presented. Accordingly, the sum of the quarterly EPS amounts may not agree to the annual total.

NOTE 21. SUBSEQUENT EVENT

On January 13, 2009, we entered into a $350 million 364-day revolving credit agreement maturing in January 2010 with Bank of America, N.A., as Administrative Agent. Borrowings under the credit agreement accrue interest at a rate equal to, at our option; either (a) a base rate determined by reference to the higher of (1) the agent's prime rate, (2) the federal funds rate plus 1/2 of 1% or (3) the London Interbank Offered Rate ("LIBOR") plus 1.00% or (b) LIBOR plus 2.25%. The margin over LIBOR is variable and is determined based on our debt rating. Among other restrictions, the terms of the credit agreement include negative covenants related to liens and a financial covenant related to the debt to earnings ratio. We now have combined committed bank lines of $950 million, including a $600 million, five-year revolving credit facility that matures in December 2012.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Under the direction of our principal executive officer and principal financial officer, we have evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2008. We have concluded that our disclosure controls and procedures were

i) effective in ensuring that information required to be disclosed is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms; and

ii) effective in ensuring that information required to be disclosed is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Our internal control over financial reporting is a process designed under the supervision of the Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our financial statements for external purposes in accordance with generally accepted accounting principles. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective in providing this reasonable assurance as of December 31, 2008. During the quarter ended December 31, 2008 there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

The effectiveness of our internal control over financial reporting as of December 31, 2008 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their report which is included herein.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of FMC Technologies, Inc.:

We have audited FMC Technologies, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). FMC Technologies, Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Annual Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the FMC Technologies, Inc.'s internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

In our opinion, FMC Technologies, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of FMC Technologies, Inc. and subsidiaries as of December 31, 2008 and 2007, and the related consolidated statements of operations, cash flows, and changes in stockholders' equity for each of the years in the three-year period ended December 31, 2008, and our report dated February 27, 2009 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Houston, Texas
February 27, 2009

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information regarding our directors is incorporated herein by reference from the section entitled “Board of Directors” of the Proxy Statement for the 2009 Annual Meeting of Stockholders. Our Board of Directors has three standing committees: an Audit Committee, a Compensation Committee and a Nominating and Governance Committee. Each of these committees operates pursuant to a written charter setting out the functions and responsibilities of the committee. The charters for the Audit Committee, the Compensation Committee and the Nominating and Governance Committee of the Board of Directors may be found on our website at www.fmctechnologies.com under “Corporate Overview—Corporate Governance” and are also available in print to any stockholder upon request without charge by submitting a written request to Jeffrey W. Carr, Vice President, General Counsel and Secretary, FMC Technologies, Inc., 1803 Gears Road, Houston, Texas 77067. Information concerning audit committee financial experts on the Audit Committee of the Board of Directors is incorporated herein by reference from the section entitled “Committees of the Board of Directors—Audit Committee” of the Proxy Statement for the 2009 Annual Meeting of Stockholders.

Information regarding our executive officers is presented in the section entitled “Executive Officers of the Registrant” in Part I of this Annual Report on Form 10-K.

Information regarding compliance by our directors and executive officers with Section 16(a) of the Securities and Exchange Act of 1934, as amended, is incorporated herein by reference from the section entitled “Section 16(a) Beneficial Ownership Reporting Compliance” of the Proxy Statement for the 2009 Annual Meeting of Stockholders.

We have adopted a code of ethics, which includes provisions that apply to our principal executive officer, principal financial officer, principal accounting officer or controller and other key professionals serving in a finance, accounting, treasury, tax or investor relations role. A copy of our code of ethics may be found on our website at www.fmctechnologies.com under “Corporate Overview—Corporate Governance” and is available in print to stockholders without charge by submitting a request to the address set forth above.

ITEM 11. EXECUTIVE COMPENSATION

Information required by this item is incorporated herein by reference from the sections entitled “Director Compensation,” “Compensation Committee Interlocks and Insider Participation in Compensation Decisions” and “Executive Compensation” of the Proxy Statement for the 2009 Annual Meeting of Stockholders.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information required by this item is incorporated herein by reference from the section entitled “Security Ownership of FMC Technologies” of the Proxy Statement for the 2009 Annual Meeting of Stockholders. Additionally, Equity Plan Compensation Information is presented in Item 5 of Part II of this Annual Report on Form 10-K.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated herein by reference from the sections entitled “Transactions with Related Persons” and “Director Independence” of the Proxy Statement for the 2009 Annual Meeting of Stockholders.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item is incorporated herein by reference from the section entitled "Relationship with Independent Public Accountants" of the Proxy Statement for the 2009 Annual Meeting of Stockholders.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) The following documents are filed as part of this Report:

1. Financial Statements and Related Report of Independent Registered Public Accounting Firm:

   Report of Independent Registered Public Accounting Firm

   Consolidated Statements of Income for the Years Ended December 31, 2008, 2007 and 2006

   Consolidated Balance Sheets as of December 31, 2008 and 2007

   Consolidated Statements of Cash Flows for the Years Ended December 31, 2008 2007 and 2006

   Consolidated Statements of Changes in Stockholders' Equity for the Years Ended December 31, 2008, 2007 and 2006

   Notes to Consolidated Financial Statements

2. Financial Statement Schedule and related Report of Independent Registered Public Accounting Firm:

   See "Schedule II—Valuation and Qualifying Accounts" and the related Report of Independent Registered Public Accounting Firm included herein. All other schedules are omitted because of the absence of conditions under which they are required or because information called for is shown in the consolidated financial statements and notes thereto in Item 8 of this Annual Report on Form 10-K.

3. Exhibits:

   See Index of Exhibits beginning on page 83 of this Annual Report on Form 10-K.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of FMC Technologies, Inc.:

We have audited the accompanying consolidated balance sheets of FMC Technologies, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, cash flows, and changes in stockholders' equity for each of the years in the three-year period ended December 31, 2008. In connection with our audits of the consolidated financial statements, we also have audited financial statement schedule II. These consolidated financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2008 and 2007, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the related financial statement schedule II, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As described in Note 11 to the consolidated financial statements, effective December 31, 2006, the Company adopted Statement of Financial Accounting Standards No. 158, Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans—an Amendment of FASB Statements No. 87, 88, 106, and 132R, which changed the method of accounting for pension and postretirement benefits.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 27, 2009 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Houston, Texas
February 27, 2009

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Schedule II—Valuation and Qualifying Accounts

(In thousands)

Description	Balance at beginning of period	Additions: charged to costs and expenses	Additions: charged to other accounts (a)	Deductions and other (b)	Balance at end of period
Year ended December 31, 2006:					
Allowance for doubtful accounts	$ 3,473	$ 417	$ 80	$ 394	$ 3,576
Valuation allowance for deferred tax assets	$ 13,551	$ 655	$ 959	$ 12,912	$ 2,253
Year ended December 31, 2007:					
Allowance for doubtful accounts	$ 3,576	$ 387	$ 507	$ 1,644	$ 2,826
Valuation allowance for deferred tax assets	$ 2,253	$ 733	$ 58	$ 575	$ 2,469
Year ended December 31, 2008:					
Allowance for doubtful accounts	$ 2,826	$ 6,268	$ (1,994)	$ (2,287)	$ 9,387
Valuation allowance for deferred tax assets	$ 2,469	$ 922	$ (86)	$ 1,339	$ 1,966

(a)—"Additions charged to other accounts" includes translation adjustments and allowances acquired through business combinations.
(b)—"Deductions and other" includes write-offs, net of recoveries, and reductions in the allowances credited to expense.

See accompanying Report of Independent Registered Public Accounting Firm.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

FMC TECHNOLOGIES, INC.
(Registrant)

By: /S/ WILLIAM H. SCHUMANN, III
William H. Schumann, III
Executive Vice President and
Chief Financial Officer

Date: February 27, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date indicated.

Date	Signature
February 27, 2009	/S/ PETER D. KINNEAR **Peter D. Kinnear** **Chairman, President and Chief Executive Officer** **(Principal Executive Officer)**
February 27, 2009	/S/ WILLIAM H. SCHUMANN, III **William H. Schumann, III** **Executive Vice President and Chief Financial Officer** **(Principal Financial Officer)**
February 27, 2009	/S/ JAY A. NUTT **Jay A. Nutt** **Corporate Controller** **(Principal Accounting Officer)**
February 27, 2009	/S/ MIKE R. BOWLIN **Mike R. Bowlin,** **Director**
February 27, 2009	/S/ PHILIP J. BURGUIERES **Philip J. Burguieres,** **Director**
February 27, 2009	/S/ C. MAURY DEVINE **C. Maury Devine,** **Director**
February 27, 2009	/S/ THOMAS M. HAMILTON **Thomas M. Hamilton,** **Director**
February 27, 2009	/S/ ASBJØRN LARSEN **Asbjørn Larsen,** **Director**
February 27, 2009	/S/ EDWARD J. MOONEY **Edward J. Mooney,** **Director**

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Date	Signature
February 27, 2009	/S/ JOSEPH H. NETHERLAND **Joseph H. Netherland,** **Director**
February 27, 2009	/S/ RICHARD A. PATTAROZZI **Richard A. Pattarozzi,** **Director**
February 27, 2009	/S/ JAMES M. RINGLER **James M. Ringler,** **Director**
February 27, 2009	/S/ JAMES R. THOMPSON **James R. Thompson,** **Director**

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INDEX OF EXHIBITS

Exhibit No.	Exhibit Description
2.1	Separation and Distribution Agreement by and between FMC Corporation and the Company, dated as of May 31, 2001 (incorporated by reference from Exhibit 2.1 to the Form S-1/A filed on June 6, 2001).
2.2	Separation and Distribution Agreement by and between FMC Technologies and John Bean Technologies Corporation, dated July 31, 2008 (incorporated by reference from Exhibit 2.1 to the Form 8-K filed on August 6, 2008).
3.1	Registrant's Amended and Restated Certificate of Incorporation (incorporated by reference from Exhibit 3.1 to the Form S-1/A filed on April 4, 2001).
3.2	Registrant's Amended and Restated Bylaws (incorporated by reference from Exhibit 3.2 the Form S-1/A filed on April 4, 2001).
4.1	Form of Specimen Certificate for the Company's Common Stock (incorporated by reference from Exhibit 4.1 to the Form S-1/A filed on May 4, 2001).
4.2	Preferred Share Purchase Rights Agreement (incorporated by reference from Exhibit 4.2 to the Form S-8 filed on June 14, 2001).
10.1	Tax Sharing Agreement by and among FMC Corporation and the Company, dated as of May 31, 2001 (incorporated by reference from Exhibit 10.1 to the Form S-1/A filed on June 6, 2001).
10.2	Employee Benefits Agreement by and between FMC Corporation and the Company, dated as of May 30, 2001 (incorporated by reference from Exhibit 10.2 to the Form S-1/A filed on June 6, 2001).
10.3	Transition Services Agreement between FMC Corporation and the Company, dated as of May 31, 2001 (incorporated by reference from Exhibit 10.3 to the Form S-1/A filed on June 6, 2001).
10.4*	Amended and Restated Incentive Compensation and Stock Plan, dated February 25, 2008 (incorporated by reference from Exhibit 10.4(p) to the Form 8-K filed on February 29, 2008).
10.4.a*	Form of Grant Agreement for Long Term Incentive Restricted Stock Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (Employee) (incorporated by reference from 10.4d to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.b*	Form of Grant Agreement for Long Term Incentive Restricted Stock Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (Non-Employee Director) (incorporated by reference from 10.4e to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.c*	Form of Grant Agreement for Key Manager Restricted Stock Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (incorporated by reference from 10.4f to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.d*	Form of Grant Agreement for Non-Qualified Stock Option Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (Employee) (incorporated by reference from 10.4g to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.e*	Form of Grant Agreement for Non-Qualified Stock Option Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (Non-Employee Director) (incorporated by reference from 10.4h to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.f*	Form of Grant Agreement for Stock Appreciation Rights Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (incorporated by reference from 10.4i to the Quarterly Report on Form 10-Q filed on May 10, 2005).

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Exhibit No.	Exhibit Description
10.4.g*	Form of Grant Agreement for Performance Units Grant Pursuant to FMC Technologies, Inc. Incentive Compensation and Stock Plan (incorporated by reference from 10.4j to the Quarterly Report on Form 10-Q filed on May 10, 2005).
10.4.h*	Form of Long Term Incentive Performance Share Restricted Stock Agreement Pursuant to the FMC Technologies, Inc. Incentive Compensation and Stock Plan (incorporated by reference from 10.4k to the Quarterly Report on Form 10-Q filed on May 9, 2006).
10.4.i*	Form of Long Term Incentive Performance Share Restricted Stock Agreement Pursuant to the FMC Technologies, Inc. Incentive Compensation and Stock Plan
10.5*	Forms of Executive Severance Agreements
10.7.a*	FMC Technologies, Inc. Salaried Employees' Equivalent Retirement Plan (incorporated by reference from Exhibit 10.7.a to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.7.b*	FMC Technologies, Inc. Equivalent Retirement Plan Grantor Trust Agreement (incorporated by reference from Exhibit 10.7.b to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.7.c*	First Amendment to the FMC Technologies, Inc. Salaried Employees' Equivalent Retirement Plan (incorporated by reference from Exhibit 10.7.c to the Annual Report on Form 10-K filed on March 25, 2003).
10.8.a*	FMC Technologies, Inc. Savings and Investment Plan (incorporated by reference from Exhibit 10.8.a to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.8.b*	FMC Technologies, Inc. Savings and Investment Plan Trust (incorporated by reference from Exhibit 10.8.b to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.8.c*	First Amendment to the FMC Technologies, Inc. Savings and Investment Plan (incorporated by reference from Exhibit 10.8.c to the Annual Report on Form 10-K filed on March 25, 2003).
10.8.d*	Second Amendment to the FMC Technologies, Inc. Savings and Investment Plan (incorporated by reference from Exhibit 10.8.d to the Annual Report on Form 10-K filed on March 25, 2003).
10.8.e*	Third Amendment of the FMC Technologies, Inc. Savings and Investment Plan (incorporated by reference from Exhibit 10.8.e to the Quarterly Report on Form 10-Q filed on November 12, 2003).
10.9.a*	FMC Technologies, Inc. Non-Qualified Savings and Investment Plan (incorporated by reference from Exhibit 10.9.a to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.9.b*	FMC Technologies, Inc. Non-Qualified Savings and Investment Plan Trust Agreement (incorporated by reference from Exhibit 10.9.b to the Quarterly Report on Form 10-Q filed on November 14, 2001).
10.9.c*	First Amendment to the FMC Technologies, Inc. Non-Qualified Savings and Investment Plan (incorporated by reference from Exhibit 10.9.c to the Annual Report on Form 10-K filed on March 25, 2003).
10.10	Commercial Paper Dealer Agreement 4(2) Program between Banc of America Securities LLC and the Company, dated as of January 24, 2003 (incorporated by reference from Exhibit 10.11 to the Annual Report on Form 10-K filed on March 25, 2003).
10.11	Issuing and Paying Agency Agreement between Wells Fargo Bank, National Association and the Company, dated as of January 3, 2004 (incorporated by reference from Exhibit 10.12 to the Annual Report on Form 10-K filed on March 12, 2004).

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Exhibit No.	Exhibit Description
10.12	$600,000,000 Five-Year Credit Agreement dated December 6, 2007, between FMC Technologies, Inc. and JPMorgan Chase Bank, N.A., as Administrative Agent (incorporated by reference from Exhibit 10.15 to the Form 8-K filed on December 7, 2007).
10.13	$350,000,000 364-Day Credit Agreement dated January 13, 2009, between FMC Technologies, Inc. and Bank of America, LP, as Administrative Agent (incorporated by reference from Exhibit 10.13 to the Form 8-K filed on January 19, 2009).
10.14	Tax Sharing Agreement between FMC Technologies, Inc. and John Bean Technologies Corporation, dated July 31, 2008 (incorporated by reference from Exhibit 10.1 to the Form 8-K filed on August 6, 2008).
10.15	Securities Purchase Agreement among FMC Technologies, Inc. and Schilling Robotics, Inc., Schilling Robotics, LLC and Tyler Schilling, dated December 24, 2008.
10.16	Unit Holders Agreement among FMC Technologies, Inc., Schilling Robotics, Inc., and Tyler Schilling, dated December 26, 2008.
10.17	Amended and Restated Operating Agreement among FMC Technologies, Inc., Schilling Robotics, Inc., Schilling Robotics Newco, LLC, Schilling Robotics, LLC and Tyler Schilling, dated December 26, 2008.
14.1	FMC Technologies, Inc. Code of Business Conduct and Ethics Including Provisions for Principal Executive and Financial Officers (incorporated by reference from Exhibit 10.12 to the Annual Report on Form 10-K filed on March 12, 2004).
21.1	Significant Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a).
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a).
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

* Indicates a management contract or compensatory plan or arrangement.

Exhibit 10.4.i

**LONG TERM INCENTIVE RESTRICTED STOCK AGREEMENT
PURSUANT TO THE FMC TECHNOLOGIES, INC.
INCENTIVE COMPENSATION AND STOCK PLAN**

This Agreement is made as of the <<Grant Date>> (the "Grant Date") by FMC Technologies, Inc., a Delaware corporation, (the "Company") and <<Participant Name>> (the "Employee").

In 2001, the Board of Directors of the Company (the "Board") adopted the FMC Technologies, Inc. Incentive Compensation and Stock Plan (the "Plan"). The Plan, as it may be amended and continued, is incorporated by reference and made a part of this Agreement and will control the rights and obligations of the Company and the Employee under this Agreement. Except as otherwise provided, capitalized terms have the meaning provided in the Plan. To the extent there is a conflict between the Plan and this Agreement, the Plan will prevail.

The Compensation Committee of the Board (the "Committee") determined that it would be to the competitive advantage and interest of the Company and its stockholders to grant an award of restricted stock to the Employee as an inducement to remain in the service of the Company or one of its affiliates (collectively, the "Employer"), and as an incentive for increased efforts during such service.

The Committee, on behalf of the Company, grants to the Employee an award of <<# of Shares Granted>> shares of restricted stock (the "Restricted Shares") of the Company's common stock par value of $.01 per share (the "Common Stock") upon the following terms and conditions:

1. Vesting. The Restricted Shares will vest and be immediately transferable on January 2, 3 years after the grant date (the "Vesting Date"). Notwithstanding the foregoing, the Restricted Shares will vest and be immediately transferable in the event of the Employee's death or Disability, or a Change in Control of the Company. Notwithstanding the foregoing, in the event of the Employee's retirement under the Company's pension plan on or after age 62, the Restricted Shares will vest and be immediately transferable on the Vesting Date. All Restricted Shares will be forfeited upon termination of the Employee's employment with the Employer before the Vesting Date for a reason other than death, Disability, a Change in Control of the Company or retirement under the Company's pension plan on or after age 62.

2. Adjustment. The Committee shall make equitable substitutions or adjustments in the Restricted Shares as it determines to be appropriate in the event of any corporate event or transaction such as a stock split, merger, consolidation, separation, including a spin-off or other distribution of stock or property of the Company, reorganization or any partial or complete liquidation of the Company.

3. Rights as Stockholder.

(a) The Restricted Shares will be issued in the form of a book entry registration. The Company may issue a stock certificate (the “Certificate”) in the Employee’s name representing the Restricted Shares prior to the Vesting Date, in which case, the Employee will execute a stock power in favor of the Company, the Certificate will be held by the Secretary of the Company (the “Escrow Agent”) and will be imprinted with a legend stating that the Restricted Shares represented by the Certificate may not be sold, exchanged, transferred, pledged, hypothecated or otherwise disposed of except in accordance with this Agreement. The Escrow Agent will hold the Certificate until the Vesting Date. As soon as practicable after the Vesting Date the Company will issue unlegended Certificates for Common Stock to the Employee and the Employee will surrender any legended Certificates representing the Restricted Shares, if applicable.

(b) Prior to the Vesting Date, the Employee may not vote, sell, exchange, transfer, pledge, hypothecate or otherwise dispose of any of the Restricted Shares. Notwithstanding the foregoing the Employee may prior to the Vesting Date pledge Restricted Shares as security for a loan from the Company to obtain funds to pay the option price for any stock options granted under the Plan. The Restricted Shares have Dividend Equivalent Rights.

4. No Limitation on Rights of the Company. The granting of Restricted Shares will not in any way affect the right or power of the Company to make adjustments, reclassifications or changes in its capital or business structure or to merge, consolidate, reincorporate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

5. Employment. Nothing in this Agreement or in the Plan will be construed as constituting a commitment, guarantee, agreement or understanding of any kind or nature that the Employer will continue to employ the Employee, or as affecting in any way the right of the Employer to terminate the employment of the Employee at any time.

6. Government Regulation. The Company’s obligation to deliver Common Stock following the Vesting Date will be subject to all applicable laws, rules and regulations and to such approvals by any governmental agencies or national securities exchanges as may be required.

7. Withholding. The Employer will comply with all applicable withholding tax laws, and will be entitled to take any action necessary to effectuate such compliance. The Company may withhold a portion of the Common Stock to which the Employee or beneficiary otherwise would be entitled equivalent in value to the taxes required to be withheld, determined based upon the Fair Market Value of the Common Stock. For purposes of withholding, Fair Market Value shall be equal to the closing price of the Common Stock on the Vesting Date, or, if the Vesting Date is not a business day, the next business day immediately following the Vesting Date.

8. Notice. Any notice to the Company provided for in this Agreement will be addressed to it in care of its Secretary, FMC Technologies, Inc., 1803 Gears Road, Houston Texas 77067, and any notice to the Employee (or other person entitled to

receive the Restricted Shares) will be addressed to such person at the Employee's address now on file with the Company, or to such other address as either may designate to the other in writing. Any notice will be deemed to be duly given when enclosed in a properly sealed envelope addressed as stated above and deposited, postage paid, in a post office or branch post office regularly maintained by the United States government.

9. Administration. The Committee administers the Plan. The Employee's rights under this Agreement are expressly subject to the terms and conditions of the Plan, a copy of which is attached hereto, including any guidelines the Committee adopts from time to time.

10. Binding Effect. This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

11. Sole Agreement. This Agreement is the entire agreement between the parties to it, and any and all prior oral and written representations are merged into this Agreement. This Agreement may only be amended by written agreement between the Company and the Employee.

12. Governing Law. The interpretation, performance and enforcement of this Agreement will be governed by the laws of the State of Delaware.

13. Privacy. Employee acknowledges and agrees to the Employer transferring certain personal data of such Employee to the Company for purposes of implementing, performing or administering the Plan or any related benefit. Employee expressly gives his consent to the Employer and the Company to process such personal data.

Executed as of the Grant Date.

FMC Technologies, Inc.

By:__________________________________ __________________________________

Vice President, Administration

<<Signed Electronically>>

<<Social Security Number>>

<<Acceptance Date>>

This document constitutes part of a prospectus covering securities that have been registered under the Securities Act of 1933.

Exhibit 10.5

Form of
FMC Technologies, Inc.
Executive Severance Agreement

THIS AGREEMENT is made and entered into as of the _____day of_____, 200_, by and between FMC Technologies, Inc. (hereinafter referred to as the "Company") and __________________________ <<Executive>>____(hereinafter referred to as the "Executive").

WHEREAS, the Board has approved the Company's entering into severance agreements with certain key executives of the Company;

WHEREAS, the Executive is a key executive of the Company;

WHEREAS, should the possibility of a Change in Control of the Company arise, the Board believes it is imperative that the Company and the Board should be able to rely upon the Executive to continue in the Executive's position, and that the Company should be able to receive and rely upon the Executive's advice, if requested, as to the best interests of the Company and its shareholders without concern that the Executive might be distracted by the personal uncertainties and risks created by the possibility of a Change in Control;

WHEREAS, should the possibility of a Change in Control arise, in addition to the Executive's regular duties, the Executive may be called upon to assist in the assessment of such possible Change in Control, advise management and the Board as to whether such Change in Control would be in the best interests of the Company and its shareholders, and to take such other actions as the Board might determine to be appropriate; and

NOW THEREFORE, to assure the Company that it will have the continued dedication of the Executive and the availability of the Executive's advice and counsel notwithstanding the possibility, threat, or occurrence of a Change in Control of the Company, and to induce the Executive to remain in the employ of the Company, and for other good and valuable consideration, the Company and the Executive agree as follows:

Article 1. Establishment, Term, and Purpose

This Agreement will commence on the Effective Date and will continue in effect until the End Date (defined below). Upon the End Date and each anniversary thereafter of the End Date, the term of this Agreement will be extended automatically for one (1) additional year, unless the Committee delivers written notice six (6) months prior to such anniversary to the Executive that this Agreement will not be extended. In such case, this Agreement will terminate at the end of the term, or extended term, then in progress.

However, in the event a Change in Control occurs during the original or any extended term, this Agreement will remain in effect for the longer of: (i) twenty-four (24) months beyond the month in which such Change in Control occurred; and (ii) until all obligations of the Company hereunder have been fulfilled, and until all benefits required hereunder have been paid to the Executive.

Article 2. Definitions

Whenever used in this Agreement, the following terms will have the meanings set forth below and, when the meaning is intended, the initial letter of the word is capitalized.

2.1. Base Salary means the salary of record paid to an Executive as annual salary, excluding amounts received under incentive or other bonus plans, whether or not deferred.

2.2. Beneficiary means the persons or entities designated or deemed designated by the Executive pursuant to Section 9.2/10.2 herein.

2.3. Board means the Board of Directors of the Company.

2.4. Cause means:

(a) the Executive's willful and continued failure to substantially perform the Executive's employment duties in any material respect (other than any such failure resulting from physical or mental incapacity or occurring after issuance by the Executive of a Notice of Termination for Good Reason), after a written demand for substantial performance is delivered to the Executive that specifically identifies the manner in which the Company believes the Executive has failed to perform the Executive's duties, and after the Executive has failed to resume substantial performance of the Executive's duties on a continuous basis within thirty (30) calendar days of receiving such demand;

(b) the Executive's willfully engaging in conduct (other than conduct covered under (a) above) which is demonstrably and materially injurious to the Company or an affiliate; or

(c) the Executive's having been convicted of, or pleading guilty or nolo contendere to, a felony under federal or state law.

2.5. Change in Control means either a "Change in Ownership," a "Change in Effective Control," or a "Change in Ownership of a Substantial Portion of Assets," as defined below:

Change in Ownership: A Change in Ownership of the Company occurs on the date that any one person, or more than one Person Acting as a Group (as defined below), acquires ownership of stock of the Company that, together with stock held by such person or group, constitutes more than 50% of the total fair market value or total voting power of the stock of the Company. However, if any one person or more than one Person Acting as a Group, is considered to own more than 50% of the total fair market value or total voting power of the stock of the Company, the acquisition of additional stock by the same person or persons is not considered to cause a Change in Ownership of the Company (or to cause a Change in Effective Control of the Company). An increase in the percentage of stock owned by any one person, or Persons Acting as a Group, as a result of a transaction in which the Company acquires its stock in exchange for property will be treated as an acquisition of stock. This applies only when there is a transfer of stock of the Company (or issuance of stock of the Company) and stock in the Company remains outstanding after the transaction.

Persons Acting as a Group: Persons will not be considered to be acting as a group solely because they (i) purchase or own stock of the same corporation at the same time, or as a result of the same public offering, or (ii) purchase assets of the same corporation at the same time. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock or assets, or similar business transaction with the Company. If a person, including an entity, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock or assets, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

Change in Effective Control: A Change in Effective Control of the Company occurs on the date that either –

(i) Any one person, or more than one Person Acting as a Group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the Company possessing 30% or more of the total voting power of the stock of the Company; or

(ii) a majority of members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election.

A Change in Effective Control will have occurred only if the Executive is employed by the Company upon the date of the Change in Effective Control or the Company is liable for the payment of the benefits hereunder and no other corporation is a majority shareholder of the Company. Further, in the absence of an event described in paragraph (i) or (ii), a Change in Effective Control of the Company will not have occurred.

Acquisition of additional control: If any one person, or more than one Person Acting as a Group, is considered to effectively control the Company, the acquisition of additional control of the Company by the same person or persons is not considered to cause a Change in Effective Control of the Company (or to cause a Change in Ownership of the Company).

Change in Ownership of a Substantial Portion of Assets: A Change in Ownership of a Substantial Portion of Assets occurs on the date that any one person, or more than one Person Acting as a Group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 40% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. For this purpose, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

Transfers to a related person: There is no Change in Control when there is a transfer to an entity that is controlled by the shareholders of the Company immediately after the transfer. A transfer of assets by the Company is not treated as a Change of Ownership of a Substantial Portion of Assets if the assets are transferred to –

(i) A shareholder of the Company (immediately before the asset transfer) in exchange for or with respect to its stock;

(ii) An entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company;

(iii) A person, or more than one Person Acting as a Group, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the Company; or

(iv) An entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a person described in paragraph (iii).

A person's status is determined immediately after the transfer of the assets. For example, a transfer to a corporation in which the Company has no ownership interest before the transaction, but which is a majority-owned subsidiary of the Company after the transaction is not treated as a Change in Ownership of a Substantial Portion of Assets of the Company.

2.6. Code means the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

2.7. Committee means the Compensation Committee of the Board or any other committee of the Board appointed to perform the functions of the Compensation Committee.

2.8. Company means FMC Technologies, Inc., a Delaware corporation, or any successor thereto as provided in Article 9/Article 10 herein.

2.9. Disability means complete and permanent inability by reason of illness or accident to perform the duties of the occupation at which the Executive was employed when such disability commenced.

2.10. Effective Date means the date of this Agreement set forth above.

2.11. Effective Date of Termination means the date on which a Qualifying Termination occurs which triggers the payment of Severance Benefits hereunder.

2.12 End Date means March 20, 2009.

2.13 Exchange Act means the Securities Exchange Act of 1934, as amended from time to time, and any successor thereto.

2.14 Good Reason means, without the Executive's express written consent, the occurrence of any one or more of the following:

(a) The assignment of the Executive to duties materially inconsistent with the Executive's authorities, duties, responsibilities, and status (including, without limitation, offices, titles and reporting requirements) as an employee of the Company (including, without limitation, any material change in duties or status as a result of the stock of the Company ceasing to be publicly traded or of the Company becoming a subsidiary of another entity, or any material change in the Executive's reporting relationship, such as the chairman or chief executive officer ceasing to report to the Board of Directors of a publicly traded company), or a reduction or alteration in the nature or status of the Executive's authorities, duties, or responsibilities from the greatest of (i) those in effect on the Effective Date; (ii) those in effect during the fiscal year immediately preceding the year of the Change in Control; and (iii) those in effect immediately preceding the Change in Control;

(b) The Company's requiring the Executive to be based at a location which is at least fifty (50) miles further from the Executive's then current primary residence than is such residence from the office where the Executive is located at the time of the Change in Control, except for required travel on the Company's business to an extent substantially consistent with the Executive's business obligations as of the Effective Date or as the same may be changed from time to time prior to a Change in Control;

(c) A material reduction by the Company in the Executive's Base Salary as in effect on the Effective Date or as the same may be increased from time to time;

(d) A material reduction in the Executive's level of participation in any of the Company's short- and/or long-term incentive compensation plans, or employee benefit or retirement plans, policies, practices, or arrangements in which the Executive participates from the greatest of the levels in place: (i) on the Effective Date; (ii) during the fiscal year immediately preceding the fiscal year of the Change in Control; and (iii) on the date immediately preceding the date of the Change in Control;

(e) The failure of the Company to assume and agree to perform this Agreement in all material respects, as contemplated in Article 9/10 herein; or

(f) Any termination of Executive's employment by the Company that is not effected pursuant to a Notice of Termination.

(1) The existence of Good Reason will not be affected by the Executive's temporary incapacity due to physical or mental illness not constituting a Disability. The Executive's continued employment will not constitute a waiver of the Executive's rights with respect to any

circumstance constituting Good Reason. Notwithstanding the above to the contrary, "Good Reason" for Executive's separation from employment will exist only if (i) Executive provides written notice to the Company within ninety (90) days of the occurrence of any of the above listed events, (ii) the Company fails to cure the event within thirty (30) days following the Company's receipt of Executive's written notice, and (iii) Executive separates from employment with the Company effective not later than twenty four (24) months after the original occurrence of the "Good Reason" event.

2.15 Notice of Termination means a written notice which indicates the specific termination provision in this Agreement relied upon, and sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated.

2.16 Person has the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as provided in Section 13(d).

2.17 Qualifying Termination means any of the events described in Section 3.2 herein, the occurrence of which triggers the payment of Severance Benefits hereunder.

2.18 Retirement means the Executive's voluntary termination of employment in a manner that qualifies the Executive to receive immediately payable retirement benefits from the FMC Technologies, Inc. Salaried Employees' Retirement Program.

2.19 Severance Benefits means the payment of severance compensation as provided in Section 3.3 herein.

2.20 Trust means the Company grantor trust to be created pursuant to Article 5 of this Agreement.

Article 3. Severance Benefits

3.1. Right to Severance Benefits. The Executive will be entitled to receive from the Company Severance Benefits, as described in Section 3.3 herein, if there has been a Change in Control of the Company and if, within twenty-four (24) calendar months following the Change in Control, a Qualifying Termination of the Executive has occurred.

The Executive will not be entitled to receive Severance Benefits if the Executive's employment is terminated (i) for Cause, (ii) due to a voluntary termination without Good Reason, or (iii) due to death or Disability.

3.2. Qualifying Termination. The occurrence of any one or more of the following events will trigger the payment of Severance Benefits to the Executive under this Agreement:

(a) An involuntary termination of the Executive's employment by the Company for reasons other than Cause, Disability or death within twenty-four (24) calendar months following the month in which a Change in Control of the Company occurs;

(b) A voluntary termination by the Executive for Good Reason within twenty-four (24) calendar months following the month in which a Change in Control of the Company occurs pursuant to a Notice of Termination delivered to the Company by the Executive; or

(c) The Company or any successor company breaches any of the provisions of this Agreement.

3.3. Description of Severance Benefits. In the event the Executive becomes entitled to receive Severance Benefits, as provided in Sections 3.1 and 3.2 herein, the Company will pay to the Executive (or in the event of the Executive's death, the Executive's Beneficiary) and provide him with the following:

(a) An amount equal to one/two/three (1)/(2)/(3) times the highest rate of the Executive's annualized Base Salary in effect at any time up to and including the Effective Date of Termination.

(b) An amount equal to one/two/three (1)/(2)/(3) times the greater of (i) the Executive's highest annualized target total Management Incentive Award granted under the FMC Technologies Incentive Compensation and Stock Plan for any plan year up to and including the plan year in which the Executive's Effective Date of Termination occurs, and (ii) the average of the actual total Management Incentive Awards paid (or payable) to the Executive for the two plan years immediately preceding the Effective Date of Termination, or for such lesser number of such plan years for which the Executive was eligible to earn a Management Incentive Award, annualized for any year that the Executive was not employed by the Company for the entire plan year. For purposes of determining actual total Management Incentive Awards under the preceding sentence, any amounts the Executive deferred will be treated as if they had been paid to the Executive, rather than deferred.

(c) An amount equal to the Executive's unpaid Base Salary, and unused and accrued vacation pay, earned or accrued through the Effective Date of Termination.

(d) An amount equal to the target total Management Incentive Award established for the plan year in which the Executive's Effective Date of Termination occurred, prorated through the Effective Date of Termination.

(e) Subject to applicable law and regulation as of the Effective Date of Termination, a continuation of the Company's welfare benefits of health care, life and accidental death and dismemberment, and disability insurance coverage for one (1) full year/eighteen (18) months after the Effective Date of Termination. These benefits will be provided to the Executive (and to the Executive's covered spouse and dependents) at the same premium cost, and at the same coverage level, as in effect as of the date of the Change in Control. The continuation of these welfare benefits will be discontinued prior to the end of the one (1) year/eighteen (18) month period if the Executive has available substantially similar benefits at a comparable cost from a subsequent employer, as determined by the Committee. In addition, the Company will make available for purchase by the Executive continued health care, life and accidental death and dismemberment, and disability insurance coverage at the same coverage level as in effect as of the date of the Change in Control for a period of eighteen (18) months beginning immediately upon the end of the coverage period provided under the foregoing provisions of this Section 3.3(e).

Awards granted under the FMC Technologies, Inc. Incentive Compensation and Stock Plan, and other incentive arrangements adopted by the Company will be treated pursuant to the terms of the applicable plan.

Any restrictions imposed by Company ownership or retention guidelines applicable to the sale of the Company's Common Stock by executive officers will not apply to any Awards granted to the Executive prior to a Change of Control under the FMC Technologies, Inc. Incentive Compensation and Stock Plan or other incentive arrangements adopted by the Company that vests as a result of the Change of Control in accordance with the terms of this Agreement.

The aggregate benefits accrued by the Executive as of the Effective Date of Termination under the FMC Technologies, Inc. Salaried Employees' Retirement Program, the FMC Technologies, Inc. Savings and Investment Plan, the FMC Technologies, Inc. Salaried Employees' Equivalent Retirement Plan, the FMC Technologies, Inc. Non-Qualified Savings and Investment Plan and other savings and retirement plans sponsored by the Company will be determined and distributed pursuant to the terms of the applicable plan in effect as of the day immediately prior to the Change in Control, including but not limited to, the Executive's distribution elections.

For all purposes under the Company's nonqualified retirement plans (including, but not limited to, benefit calculation and benefit commencement), it will be assumed that the Executive's employment continued following the Effective Date of Termination for one/two/three (1)/(2)/(3) full year(s) (i.e., one/two/three (1)/(2)/(3) additional year(s) of age and service credits will be added); provided, however, that for purposes of determining "final average pay" under such programs, the Executive's actual pay history as of the Effective Date of Termination will be used.

3.4. Termination for Disability. If the Executive's employment is terminated due to Disability, the Executive will receive the Executive's Base Salary through the Effective Date of Termination, and the Executive's benefits will be determined in accordance with the Company's disability, retirement, survivor's benefits, insurance and other applicable plans and programs then in effect. If the Executive's employment is terminated due to Disability, he will not be entitled to the Severance Benefits described in Section 3.3.

3.5 Termination upon Death. If the Executive's employment is terminated due to death, the Executive's benefits will be determined in accordance with the Company's retirement, survivor's benefits, insurance and other applicable programs of the Company then in effect. If the Executive's employment is terminated due to death, neither the Executive nor the Executive's Beneficiary will be entitled to the Severance Benefits described in Section 3.3.

3.6. Termination for Cause, or Other Than for Good Reason or Retirement. Following a Change in Control of the Company, if the Executive's employment is terminated either: (a) by the Company for Cause; or (b) by the Executive (other than for Retirement, Good Reason, or under circumstances giving rise to a Qualifying Termination described in Section 3.2(c) herein), the Company will pay the Executive an amount equal to the Executive's Base Salary and accrued vacation through the Effective Date of Termination, at the rate then in effect, plus all other amounts to which the Executive is entitled under any plans of the Company, at the time such payments are due and the Company will have no further obligations to the Executive under this Agreement.

3.7. Notice of Termination. Any termination of employment by the Company or by the Executive for Good Reason will be communicated by a Notice of Termination.

Article 4. Form and Timing of Severance Benefits

4.1. Form and Timing of Severance Benefits. The Severance Benefits described in Sections 3.3 (a), (b), (c) and (d) herein will be paid in cash to the Executive (or the Executive's Beneficiary, if applicable) in a single lump sum as soon as practicable following the Effective Date of Termination, but in no event beyond thirty (30) days from such date.

4.2. Withholding of Taxes. The Company will be entitled to withhold from any amounts payable under this Agreement all taxes as may be legally required (including, without limitation, any United States federal taxes and any other state, city, or local taxes).

Article 5. Excise Tax Equalization Payment

5.1. Excise Tax Equalization Payment. In the event that the Executive (or the Executive's Beneficiary, if applicable) becomes entitled to Severance Benefits or any other payment or benefit under this Agreement, or under any other agreement with or plan of the Company (in the aggregate, the "Total Payments"), whether or not the Executive has terminated employment with the Company, if all or any part of the Total Payments will be subject to the tax imposed by Section 4999 of the Code (or any similar tax that may hereafter be imposed), (the "Excise Tax") the Company will pay to the Executive in cash an additional amount (the "Gross-Up Payment") such that the net amount retained by the Executive after deduction of any Excise Tax upon the Total Payments and any federal, state, and local income taxes, penalties, interest, and Excise Tax upon the Gross-Up Payment provided for by this Section 5.1 (including FICA and FUTA), will be equal to the Total Payments. The Company shall pay to the Executive the Gross-Up Payment no later than within sixty (60) days after the Executive remits to the various taxing authorities the taxes which gave rise to the Gross-Up Payment.

5.2. Tax Computation. All determinations of whether any of the Total Payments will be subject to the Excise Tax, the amounts of such Excise Tax, whether and when a Gross-Up Payment is required, the amount of such Gross-Up Payment and the assumptions to be used in arriving at such determinations, shall be made by a nationally recognized certified public accounting firm that does not serve as an accountant or auditor for any individual, entity or group effecting the Change in Control as designated by the Company (the "Accounting Firm"). The Accounting Firm will provide detailed supporting calculations to the Company and the Executive within fifteen (15) business days of the receipt of notice from the Executive or the Company requesting a calculation hereunder. The Gross-Up Payment will be made by the Company to the Executive as soon as practical following the Accounting Firm's determination of the Gross-Up Payment, but in no event beyond thirty (30) days from the Effective Date of Termination. All fees and expenses of the Accounting Firm will be paid by the Company.

For purposes of determining the amount of the Gross-Up Payment, the Executive will be deemed to pay federal income taxes at the highest marginal rate of federal income taxation in the calendar year in which the Gross-Up Payment is to be made, and state and local income taxes at the highest marginal rate of taxation in the state and locality of the Executive's residence on the Effective Date of Termination, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes.

5.3. Subsequent Recalculation. In the event the Internal Revenue Service adjusts the computations to be made pursuant to Section 5.2 herein, and as a result of such adjustment the Gross-Up Payment made to the Executive is less than the greatest Gross-Up Payment that the Executive is entitled to receive under Section 5.2, the Company will pay to the Executive an amount equal to the difference between the greatest Gross-Up Payment the Executive is entitled to receive, and the Gross-Up Payment initially made to the Executive, plus a market rate of interest, as determined by the Committee, for the period commencing on the date the first Gross-Up Payment is made, and ending on the day immediately preceding the date the subsequent Gross-Up Payment is made. The Company shall make any such payment to the Executive no later than within sixty (60) days after the Executive remits to the various taxing authorities the taxes which give rise to such payment.

Article 5/6. Establishment of Trust

As soon as practicable following the Effective Date hereof, the Company will create a Trust (which will be a grantor trust within the meaning of Sections 671-678 of the Code) for the benefit of the Executive and Beneficiaries, as appropriate. The Trust will have a Trustee as selected by the Company, and will have certain restrictions as to the Company's ability to amend the Trust or cancel benefits provided thereunder. Any assets contained in the Trust will, at all times, be specifically subject to the claims of the Company's general creditors in the event of bankruptcy or insolvency; such terms to be specifically defined within the provisions of the Trust, along with the required procedure for notifying the Trustee of any bankruptcy or insolvency.

At any time following the Effective Date hereof, the Company may, but is not obligated to, deposit assets in the Trust in an amount equal to or less than the aggregate Severance Benefits which may become due to the Executive under Sections 3.3 (a), (b), (c) and (d) of this Agreement.

As soon as practicable after the Company has knowledge that a Change in Control is imminent, but no later than the day immediately preceding the date of the Change in Control, the Company will deposit assets in such Trust in an amount equal to the estimated aggregate Severance Benefits which may become due to the Executive under Sections 3.3 (a), (b), (c) and (d) and Articles 7/8 and 8/9 of this Agreement. Such deposited amounts will be reviewed and increased, if necessary, every six (6) months following a Change in Control to reflect the Executive's estimated aggregate Severance Benefits at such time.

Article 6/7. The Company's Payment Obligation

The Company's obligation to make the payments and the arrangements provided for herein will be absolute and unconditional, and will not be affected by any circumstances, including, without limitation, any offset, counterclaim, recoupment, defense, or other right which the Company may have against the Executive or anyone else. All amounts payable by the Company hereunder will be paid without notice or demand. Each and every payment made hereunder by the Company will be final, and the Company will not seek to recover all or any part of such payment from the Executive or from whomsoever may be entitled thereto, for any reasons whatsoever.

The Executive will not be obligated to seek other employment in mitigation of the amounts payable or arrangements made under any provision of this Agreement, and the obtaining of any such other employment will in no event effect any reduction of the Company's obligations to make the payments and arrangements required to be made under this Agreement, except to the extent provided in Section 3.3(e) herein.

Notwithstanding anything in this Agreement to the contrary, if Severance Benefits are paid under this Agreement, no severance benefits under any program of the Company, other than benefits described in this Agreement, will be paid to the Executive.

Article 7/8. Fees and Expenses

To the extent permitted by law, the Company will pay as incurred within ten (10) days following receipt of an invoice from the Executive, which invoice shall be submitted no later than ninety (90) days following the date Executive incurs liability for the relevant item,) all legal fees, costs of litigation, prejudgment interest, and other expenses incurred in good faith by the Executive as a result of the Company's refusal to provide the Severance Benefits to which the Executive becomes entitled under this Agreement, or as a result of the Company's contesting the validity, enforceability, or interpretation of this Agreement, or as a result of any conflict between the parties pertaining to this Agreement. The Company's obligations under this Article 7/8 shall apply only to legal fees, costs of litigation, prejudgment interest, and other expenses incurred on or before the date that is ten (10) years after Executive's death, (b) shall not be subject to liquidation, and (c) may not be exchanged for another benefit. The amount of the legal fees, costs of litigation, prejudgment interest, and other expenses for which Executive is entitled to be reimbursed under this Article 7/8 in any calendar year shall not affect Executive's right to reimbursement of any expenses or in-kind benefits to which Executive is entitled under this Agreement or any other agreement to which Executive and the Company are parties.

Article 8/9. Outplacement Assistance

Following a Qualifying Termination (as described in Section 3.2 herein), the Executive will be reimbursed by the Company for the reasonable costs of all outplacement services obtained by the Executive within the one (1)/a two (2) year period after the Effective Date of Termination; provided; however, that the total reimbursement for such outplacement services will be limited to an amount equal to fifteen percent (15%) of the Executive's Base Salary as of the Effective Date of Termination; and further provided that the invoice for such services are submitted no later than ninety (90) days following the date the Executive incurs such costs. The Company's obligations under this Article 8/9 (a) shall apply only to costs for outplacement services obtained by the Executive, (b) shall not be subject to liquidation, and (c) may not be exchanged for another benefit. The amount of the costs of the outplacement services for which the Executive is entitled to be reimbursed under this Article 8/9 in any calendar year shall not affect Executive's right to reimbursement of any expenses or in-kind benefits to which the Executive is entitled under this Agreement or any other agreement to which the Executive and the Company are parties.

Article 9/10. Successors and Assignment

9.1 Successors to the Company. The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) of all or substantially all of the business and/or assets of the Company or of any division or subsidiary thereof to expressly assume and agree to perform the Company's obligations under this Agreement in the same manner and to the same extent that the Company would be required to perform them if no such succession had taken place.

9.2 Assignment by the Executive. This Agreement will inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. If the Executive dies while any amount would still be payable to him hereunder had he continued to live, all such amounts, unless otherwise provided herein, will be paid in accordance with the terms of this Agreement to the Executive's Beneficiary. If the Executive has not named a Beneficiary, then such amounts will be paid to the Executive's devisee, legatee, or other designee, or if there is no such designee, to the Executive's estate, and such designee, or the Executive's estate will be treated as the Beneficiary hereunder.

Article 10/11. Miscellaneous

10.1 Employment Status. Except as may be provided under any other agreement between the Executive and the Company, the employment of the Executive by the Company is "at will," and may be terminated by either the Executive or the Company at any time, subject to applicable law.

10.2 Beneficiaries. The Executive may designate one or more persons or entities as the primary and/or contingent Beneficiaries of any Severance Benefits owing to the Executive under this Agreement. Such designation must be in the form of a signed writing acceptable to the Committee. The Executive may make or change such designations at any time.

10.3 Severability. In the event any provision of this Agreement will be held illegal or invalid for any reason, the illegality or invalidity will not affect the remaining parts of the Agreement, and the Agreement will be construed and enforced as if the illegal or invalid provision had not been included. Further, the captions of this Agreement are not part of the provisions hereof and will have no force and effect.

10.4 Modification. No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing and signed by the Executive and by an authorized member of the Committee, or by the respective parties' legal representatives and successors.

10.5 Applicable Law. To the extent not preempted by the laws of the United States, the laws of the state of Delaware will be the controlling law in all matters relating to this Agreement.

10.6 Indemnification. To the full extent permitted by law, the Company will, both during and after the period of the Executive's employment, indemnify the Executive (including by advancing him expenses) for any judgments, fines, amounts paid in settlement and reasonable expenses, including any attorneys' fees, incurred by the Executive in connection with the defense of any lawsuit or other claim to which he is made a party by reason of being (or having been) an officer, director or employee of the Company or any of its subsidiaries. The Executive will be covered by director and officer liability insurance to the maximum extent that that insurance covers any officer or director (or former officer or director) of the Company.

IN WITNESS WHEREOF, the parties have executed this Agreement on this __ day of___________ __, 200_.

FMC Technologies, Inc. :

By:____ ____

Peter D. Kinnear ____

Its: President and CEO ____

Exhibit 10.15

EXECUTION VERSION

SECURITIES PURCHASE AGREEMENT

by and among

FMC TECHNOLOGIES, INC.,

SCHILLING ROBOTICS, INC.,

SCHILLING ROBOTICS, LLC,

and

for purposes of Articles II, III and IX only

TYLER SCHILLING

dated as of

December 24, 2008

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SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "Agreement"), dated as of December 24, 2008, is made by and among FMC TECHNOLOGIES, INC., a Delaware corporation ("Purchaser"), SCHILLING ROBOTICS, INC., a Delaware corporation ("Seller"), SCHILLING ROBOTICS, LLC, a Delaware limited liability company (the "Company") and, for purposes of Articles II, III and IX only, Tyler Schilling, an individual ("Schilling"). Purchaser, Seller, the Company and Schilling may be collectively referred to herein as the "Parties" and individually as a "Party." Certain capitalized terms used in this Agreement have the meanings ascribed to them in Section 10.1 hereof.

W I T N E S S E T H:

WHEREAS, Seller owns directly or indirectly one hundred (100) units of limited liability company membership interest (the "Units") of the Company;

WHEREAS, prior to consummation of the transactions set forth in this Agreement, Seller and the Company shall engage in certain restructuring transactions to ensure that all of the employees, assets and agreements relating to the Business (other than certain equity and equity-like agreements) are assigned to or otherwise legally held by the Company;

WHEREAS, Seller is entering into a unitholders agreement with Purchaser pursuant to which, among other things, Purchaser will be granted the right to acquire the remaining Units of the Company, subject to certain terms and conditions, during the two-year period beginning January 1, 2012 (the "Unitholders Agreement"); and

WHEREAS, the Manager and Members of the Company and the respective Boards of Directors of each of Purchaser and Seller have approved, and each such Board of Directors deems it advisable and in the best interests of its respective stockholders to consummate, the transactions contemplated by this Agreement upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the Parties hereto agree as follows:

ARTICLE I

PURCHASE AND SALE OF UNITS

Section 1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, at the Closing: (a) the Company agrees to issue and transfer to Purchaser and Purchaser agrees to purchase from the Company 5.45 Class A-1 Units (the "Class A-1 Units") for a purchase price equal to (i) $27,200,000 minus (ii) an amount equal to the product of 0.45 and the Schilling Transaction Expenses Estimate (the "A-1 Unit Purchase Price") and (b) Seller agrees to sell and transfer to Purchaser, and Purchaser agrees to purchase from Seller, forty-two (42) of the Units held by Seller (the "Purchased Units"), for a purchase price equal to

$88,800,000 (the “Purchased Unit Purchase Price” and together with the A-1 Unit Purchase Price, the “Total Purchase Price”) (the “Transaction”). A portion of the Purchase Unit Purchase Price shall be placed into an escrow account pursuant and subject to Section 1.7 hereof and a portion of the A-1 Unit Purchase Price shall be retained by Purchaser pursuant and subject to Section 1.8 hereof.

Section 1.2 Closing. The Closing of the Transaction (the “Closing”) shall take place at the offices of DLA Piper LLP (US) (“DLA Piper”), counsel to Seller and the Company, at 400 Capitol Mall, Suite 2400, Sacramento, CA 95814, or at such other place as Purchaser, the Company and Seller may agree, on December 26, 2008, subject to the satisfaction or waiver of the conditions to Closing set forth in Article VII (the “Closing Date”).

Section 1.3 Deliveries. Subject to the terms and conditions of this Agreement, at the Closing, (a) Seller will deliver to Purchaser a certificate or certificates representing the Purchased Units, duly endorsed for transfer to Purchaser, against payment by Purchaser of the Purchased Unit Purchase Price (less the Escrow Amount) by wire transfer of immediately available funds to Seller’s account, (b) the Purchaser shall pay the Escrow Amount to the Escrow Agent by wire transfer of immediately available funds as provided in the Escrow Agreement, (c) the Company will deliver to Purchaser a certificate or certificates for the Class A-1 Units, registered in the name of Purchaser, against payment by Purchaser of the A-1 Unit Purchase Price (less the Holdback Amount) by wire transfer of immediately available funds to the Company’s account, and (d) the Parties shall deliver the other documents and agreements described in Article VII of this Agreement.

Section 1.4 Use of Proceeds. Seller shall apply the proceeds from the sale of Purchased Units solely to the repayment of principal and interest on certain installment notes issued by Seller under that certain Purchase Agreement, dated as of December 28, 2007, by and among Seller, Newco and the Company. The Company shall apply the proceeds from the sale of the Class A-1 Units to general working capital.

Section 1.5 Amendment of Operating Agreement and Admission of Purchaser as Member of the Company. At the Closing, (i) the Company’s current Limited Liability Company Operating Agreement (the “Current Operating Agreement”) shall be amended and restated in substantially the form attached hereto as Exhibit A (the “New Operating Agreement”) and (ii) Seller, the Company and Purchaser shall take all actions necessary and appropriate to cause Purchaser to be admitted as a “Member” of the Company under the New Operating Agreement.

Section 1.6 Board of Directors of the Company. As of the Closing, the Board of Directors of the Company shall be as set forth in the New Operating Agreement.

Section 1.7 Escrow. Concurrent with the Closing, Purchaser, Seller, Schilling and U.S. Bank National Association (the “Escrow Agent”) shall enter into an escrow agreement in substantially the form attached hereto as Exhibit B (the “Escrow Agreement”). At the Closing, Purchaser shall cause the amount of Ten Million Dollars ($10,000,000) from the Purchased Unit Purchase Price (the “Escrow Amount”) to be deposited with the Escrow Agent.

Section 1.8 Purchase Price Adjustment.

(a) The parties hereto acknowledge that the purchase price has been based in part on the Company having an equity value (after giving effect to the transactions contemplated hereby, including the application of proceeds therefrom) as of the Closing Date of at least $257,777,777. The A-1 Unit Purchase Price delivered by Purchaser pursuant to Section 1.1 shall be adjusted in accordance with the following procedures. Seller and the Company agree to cause the Company's independent auditors to complete and deliver to the Company and Purchaser, as soon as practicable after the Closing Date, a consolidated audited balance sheet of Seller, the Company and the Subsidiaries as of December 26, 2008, and the related statements of operations and cash flows for the fiscal year then ended, including the notes thereto (together the "2008 Financial Statements"). Within 30 days after delivery of the 2008 Financial Statements, the Company shall deliver to Purchaser a statement setting forth the proposed calculations (the "Proposed Calculations") of Actual 2008 EBITDA, Net Debt, Actual Net Equity Value and the Actual Purchased Interest Value, accompanied by materials showing in reasonable detail Seller's support for the Proposed Calculations. For purposes of calculating "Actual Net Equity Value," the Parties agree to use the following formula:

Actual Net Equity Value = (E x 8.52) – ND

Where: E = Actual 2008 EBITDA

ND = Net Debt

(b) Purchaser shall have the right for 30 days following its receipt of the Proposed Calculations to object to the Proposed Calculations. Any objection made by Purchaser shall be accompanied by materials showing in reasonable detail Purchaser's support for its position. Purchaser shall be deemed to have waived any rights to object under this Agreement unless Purchaser furnishes its written objections, together with supporting materials, to the Company within such 30-day period. Purchaser and the Company shall meet to resolve any differences in their respective positions with respect to the Proposed Calculations. If the Company and Purchaser are unable to agree upon the Proposed Calculations within 30 days of the Company's receipt of Purchaser's objections, Purchaser or the Company may submit the matter to be resolved through an arbitration procedure conducted in accordance with Section 9.3.

(c) Following the final determination of the Actual Purchased Interest Value as set forth in Section 1.7(b) above, if the Actual Purchased Interest Value is less than $116,000,000 (the amount of such shortfall, the "Company Adjustment Payment"), Purchaser shall offset the Company Adjustment Payment against the Holdback Amount. Following such offset, (i) to the extent the Company Adjustment Payment exceeds the Holdback Amount, the Company shall promptly (but in any event within five Business Days) wire transfer in immediately available funds to Purchaser, to an account designated by Purchaser, an amount equal to such excess, or (ii) to the extent the Holdback Amount exceeds the Company Adjustment Payment, Purchaser shall promptly (but in any event within five Business Days) wire transfer in immediately available funds to the Company, to an account designated by the Company, an amount equal to such excess. Notwithstanding the foregoing, in the event that the Company Adjustment Payment exceeds $20,000,000, the Company shall promptly (but in any event within five Business Days) deliver to Purchaser in the manner described above, $10,000,000 in immediately available funds and the Parties shall consult with each other as to the treatment of the amount in excess of $20,000,000.

(d) Following the final determination of the Actual Purchased Interest Value as set forth in Section 1.7(b) above, if the Actual Purchased Interest Value equals or exceeds $116,000,000, no payment shall be made by the Company in respect of this Section 1.7. In such event, Purchaser shall promptly (but in any event within five Business Days) wire transfer in immediately available funds to the Company, to an account designated by the Company, an amount equal to the Holdback Amount.

(e) All amounts to be paid under this Section 1.7 shall be deemed to be adjustments to the Total Purchase Price.

(f) For illustration purposes only, Exhibit C attached hereto sets forth three sample calculations of Actual Net Equity Value and the resulting amounts payable by Seller or Buyer pursuant to this Section 1.7.

(g) The Parties agree that the determination of Actual 2008 EBITDA shall, to the extent applicable, take into account the adjustments described on Exhibit D hereto. The Company shall manage its working capital, including the payment of accounts payable, in a manner consistent with past practice until the end of the Company's fiscal year ending December 26, 2008.

ARTICLE II

REPRESENTATIONS AND WARRANTIES REGARDING SELLER

Except as set forth in the schedule prepared and signed by an appropriate officer of Seller and an appropriate officer of the Company delivered to Purchaser prior to the execution of this Agreement setting forth specific exceptions to Seller's, the Company's and Schilling's representations and warranties set forth in this Agreement (each section of which qualifies the correspondingly numbered representation and warranty by the Company, Seller and Schilling) (the "Disclosure Schedule"), Seller and Schilling, jointly and severally, represent and warrant to Purchaser as of the date hereof and the Closing Date as follows:

Section 2.1 Title. Seller is the record owner of 55 Units, its wholly owned subsidiary, Newco, is the record owner of 45 Units, and Seller is the beneficial owner of all 100 Units. Immediately after the Closing Purchaser will be the record and beneficial owner of all such Purchased Units, in each case free and clear of all Liens, other than Liens created or imposed by Purchaser and restrictions on transfers under applicable securities laws. Seller has not granted any option or right, and is not a party to or bound by any agreement that requires or, upon the passage of time, the payment of money or occurrence of any other event, would require Seller to transfer any of the Units to anyone (other than to Purchaser under this Agreement).

Section 2.2 Organization and Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and currently contemplated to be conducted. Seller is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such other jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Company Material Adverse Effect. Seller has the requisite corporate power and authority to execute and deliver this Agreement and the other agreements, documents and instruments of Seller contemplated hereby and to perform its obligations hereunder and thereunder. Execution, delivery and performance of such obligations by Seller have been duly and validly authorized by all requisite action on the part of Seller.

Section 2.3 Capitalization.

(a) As of the date hereof, the authorized equity interests of Seller consist of 30,000,000 shares of common stock, $0.0001 par value per share (the "Seller's Common Stock"), 15,660,901 of which are issued and outstanding. As of the date hereof, (i) no shares of Seller's Common Stock are issued and held in the treasury of Seller and (ii) no shares of Seller's Common Stock are reserved for issuance pursuant to any outstanding options, warrants or other securities convertible into shares of Seller's Common Stock. Of the issued and outstanding shares of Seller's Common Stock set forth above, none are subject to repurchase rights in connection with the Transaction. All of the outstanding shares of Seller's Common Stock are duly authorized, validly issued, fully paid and non-assessable and were issued in compliance with all applicable laws, including federal and state securities laws, and Seller's certificate of incorporation and bylaws, and are held free and clear of all Liens. The rights, preferences and privileges of the shares of Seller's Common Stock are as set forth in the Seller's certificate of incorporation. Schedule 2.3(a) of the Disclosure Schedule sets forth a true and complete list of all record holders of the shares of Seller's Common Stock as of the date of this Agreement with the name of each holder and number of shares of Seller's Common Stock held. Seller is the record and beneficial owner of all outstanding Securities of Newco.

(b) Except as set forth in Schedule 2.3(a) of the Disclosure Schedule, (i) there are no equity interests of Seller or Newco issued or outstanding; (ii) there are no existing options, warrants, calls, preemptive rights, rights of first refusal, equity appreciation, phantom stock or similar rights, indebtedness having general voting rights or debt convertible into securities having such rights ("Voting Debt") or subscriptions or other rights, agreements, arrangements or commitments of any character, relating to the issued or unissued equity interests of Seller or Newco obligating Seller or Newco to issue, transfer or sell or cause to be issued, transferred or sold any equity interests or Voting Debt of, or other equity interest in, Seller or Newco or securities convertible into or exchangeable for such equity interests, or obligating Seller or Newco to grant, extend or enter into any such option, warrant, call, subscription or other right, agreement, arrangement or commitment and (iii) there are no outstanding contractual obligations of Seller or Newco to repurchase, redeem or otherwise acquire any shares of Seller's Common Stock or other Securities of Newco or to provide funds to make any investment (in the form of a loan, capital contribution or otherwise) in any other entity.

(c) There are no voting trusts or other agreements or understandings to which Seller or Newco is a party with respect to the voting of the equity interests of Seller or Newco.

(d) No Indebtedness of Seller contains any restriction upon (i) the prepayment of any of such Indebtedness, (ii) the incurrence of Indebtedness by Seller, or (iii) the ability of Seller to grant any Lien on its properties or assets. Newco has not incurred and is not liable for any Indebtedness. For purposes of this Agreement, "Indebtedness" shall mean (A) all indebtedness, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (including but not limited to amounts referred to by Seller, the Company or any Subsidiary as equipment debt, AR debt, and "growth capital" debt), (B) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (C) all obligations under financing or capital leases or letters of credit, (D) all obligations in respect of acceptances issued or created, (E) all liabilities secured by any lien on any property, (F) all non-compete payments due to owners of businesses acquired by Seller, the Company or any Subsidiary and (G) all guarantee obligations, in each case including the principal amount thereof, any accrued interest thereon and any prepayment premiums or fees or termination fees with respect thereto, *provided, however*, that trade payables and accruals incurred in the ordinary course of business shall not be considered Indebtedness hereunder.

Section 2.4 No Conflict; Consents.

(a) No notice to or filing with, and no permit, authorization, waiver, consent or approval of, any arbitrator, court, nation, government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial regulatory or administrative functions of, or pertaining to, government (in each case, whether foreign or domestic) (a "Governmental Entity"), or any other Person is necessary for the execution, delivery or performance of this Agreement and the other agreements contemplated hereby by Seller or the consummation by Seller of the transactions contemplated by this Agreement, except for (i) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities laws and the securities laws of any foreign country; (ii) such antitrust filings as may be required in any jurisdiction; and (iii) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, could not be reasonably expected to have a Company Material Adverse Effect.

(b) No consent, order, authorization, approval, declaration or filing is required on the part of Seller for or in connection with the execution, delivery or performance of this Agreement and the other agreements, documents and instruments of Seller contemplated hereby. Neither the execution and delivery of this Agreement by Seller, the consummation by Seller of the transactions contemplated hereby nor compliance by Seller with any of the provisions hereof will (i) conflict with or result in any breach of any provision of Seller's certificate of incorporation or bylaws, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration or result in the creation of any mortgage, pledge, charge, security interest, claim or encumbrance of any kind (collectively, a "Lien")) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, permit, authorization, franchise, contract, agreement or other instrument or obligation to which Seller is a party or by which it or any of its properties or assets may be bound or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, or its properties or assets.

Section 2.5 Validity and Enforceability. This Agreement, and the Transaction Documents to which Seller is a party, shall be, when executed and delivered by Seller, the valid and binding obligations of the Seller enforceable in accordance with their respective terms, subject to (i) laws of general application relating to specific performance, injunctive relief or other equitable remedies, (ii) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (iii) federal or state laws limiting enforceability of the indemnification provisions in Article IX of this Agreement.

Section 2.6 No Other Activities. Except as disclosed on Schedule 2.6 of the Disclosure Schedule, Seller has not engaged in any business activities, held any assets or incurred any liabilities since its formation, other than holding Units solely as a unitholder of the Company.

Section 2.7 Taxes.

(a) The Seller's wholly owned subsidiary, Newco, through which the Seller indirectly owns 45 Units, is properly classified as an entity disregarded as separate from the Seller for U.S. federal income Tax purposes in accordance with Treas. Reg. § 301.7701-3;

(b) For federal income Tax purposes, the Seller is, and has been at all times since its inception, properly classified as an "S corporation" under Section 1361 of the Code and the Treasury Regulations thereunder, and is and has been so classified for state income Tax purposes pursuant to analogous state provisions. Each of the subsidiaries of the Seller is either (i) properly classified as an entity disregarded as separate from the Seller for U.S. federal income Tax purposes in accordance with Treas. Reg. § 301.7701-3 or (ii) properly classified as a "qualified subchapter S subsidiary" within the meaning of Section 1361 of the Code; *provided*, *however*, that the foregoing will not apply to the Company or the Subsidiaries after the completion of the Seller's obligations in Section 6.7. The Seller will not be liable for any Tax under Section 1374 of the Code or any other applicable state or local law as a result of the transactions contemplated by this Agreement, including the making of a Section 338(h)(10) Election. The Seller has not, since its inception, acquired assets from another corporation in a transaction in which the Seller's Tax basis for the acquired assets was determined, in whole or in part, by reference to the Tax basis of the acquired assets (or any other property) in the hands of the transferor or acquired the stock of any corporation which is or became a "qualified subchapter S subsidiary" within the meaning of Section 1361(b)(3)(B) of the Code;

(c) The Seller is not required to make payments, dividend distributions or loans to any shareholder in regard to taxes owed by that shareholder with respect to its share of taxable income earned by the Seller;

(d) The Seller has timely filed with the appropriate Tax Authorities all Tax Returns required to be filed, and such Tax Returns are true, correct and complete;

(e) The Seller has paid in full all Taxes which are or have become due (whether or not shown on any Tax Return). There are no liens for Taxes upon any property or assets of the Seller except for liens for personal property Taxes not yet due and payable. No Audits are presently pending with regard to any Taxes or Tax Returns of the Seller, and no such Audit is threatened, and no deficiency or adjustment for any Taxes has been proposed, asserted, or assessed against the Seller. No material adjustments have been asserted as a result of any Audit which have not been resolved and fully paid, and no issue has been raised by any Tax Authority in any Audit of the Seller that, if raised with respect to any other period not so audited, could be expected to result in a proposed deficiency for any period not so audited. The Seller has never received any notice of any claim made by a Tax Authority in a jurisdiction where the Seller does not file a Tax Return, that the Seller is or may be subject to taxation by that jurisdiction. There are no outstanding requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against the Seller, and no power of attorney granted by the Seller with respect to any Taxes or Tax Returns is currently in force. The Seller does not have any liability for or in respect of the Taxes of, or determined by reference to the Tax liability of, another Person. The Seller is not a party to, bound by, obligated under, any Tax sharing agreement, Tax allocation agreement, Tax indemnification agreement, agreement where liability is determined by reference to the Tax liability of a third party, or any similar agreement, contract, or arrangement;

(f) The Seller has never had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country; and

(g) The Seller has never engaged in any transaction that gives rise to: (x) a registration obligation under Section 6111 of the Code or the Treasury Regulations promulgated thereunder; (y) a list maintenance obligation under Section 6112 of the Code or the Treasury Regulations promulgated thereunder; or (z) a disclosure obligation as a “reportable transaction” under Section 6011 of the Code or the Treasury Regulations promulgated thereunder.

ARTICLE III

REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY

Except as set forth in the Disclosure Schedule, the Company, Seller and Schilling, jointly and severally, represent and warrant to Purchaser as of the date hereof and the Closing Date as follows:

Section 3.1 Organization.

(a) The Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and currently contemplated to be conducted. The Company is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such other jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Company Material Adverse Effect. For purposes of this Agreement, "Company Material Adverse Effect" means any event or occurrence that has had or could reasonably be expected to have, individually or in the aggregate, a material adverse effect (i) on the business, assets, liabilities, properties, results of operations or condition (financial or otherwise) of Seller, the Company and the Subsidiaries, taken as a whole, or (ii) that would prevent or materially alter or delay the Transaction or any of the other transactions contemplated hereby, in each case other than as a result of changes or effects resulting, directly or indirectly, from (A) the public announcement of or performance of the Transaction (including any action or inaction by the Company's or any Subsidiary's customers, suppliers, employees or competitors as a result of the public announcement or consummation of the Transaction), (B) changes in GAAP or any applicable law, (C) changes in the Business, (D) any attack on, or by, outbreak or escalation of hostilities or acts of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity, (E) changes in general economic conditions or the financial securities markets or credit markets generally, but only to the extent any such change described in clauses (B), (C), (D) and (E) is not specifically related to Seller, the Company and the Subsidiaries taken as a whole or disproportionately affects the Seller, Company and the Subsidiaries taken as a whole relative to other businesses that derive substantially all of their revenue from the same type of business as the Business. The Company has heretofore delivered to Purchaser accurate and complete copies of the Company's Current Operating Agreement.

(b) Each subsidiary of the Company (each a "Subsidiary") is an organization duly formed, validly existing and in good standing (with respect to jurisdictions that recognize such concept with respect to such entity) under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted and currently contemplated to be conducted. Each Subsidiary is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such other jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Company Material Adverse Effect.

(c) Schedule 3.1(c) of the Disclosure Schedule lists each Subsidiary and its jurisdiction of organization. Each Subsidiary is 100% owned by the Company. The Company does not own or have the right to acquire, directly or indirectly, any capital stock or other equity securities of any corporation or have any direct or indirect equity or ownership investment or interest in any Person other than the Subsidiaries.

(d) Schedule 3.1(d) of the Disclosure Schedule sets forth the name and title of each officer and director of the Company and each Subsidiary. Schilling is the sole manager of the Company (the "Manager").

Section 3.2 Capitalization.

(a) As of the date hereof, the authorized equity interests of the Company consist of 100 Units, all of which are issued and outstanding. As of the date hereof,

(i) no Units are issued and held in the treasury of the Company and (ii) no Units are reserved for issuance pursuant to any outstanding options, warrants or other securities convertible into Units. Of the issued and outstanding Units set forth above, none are subject to repurchase rights in connection with the Transaction. All of the outstanding Units are duly authorized, validly issued, fully paid and non-assessable and were issued in compliance with all applicable laws, including federal and state securities laws, and the Current Operating Agreement, and are held free and clear of all Liens. The rights, preferences and privileges of the Units are as set forth in the Current Operating Agreement. Schedule 3.2(a) of the Disclosure Schedule sets forth a true and complete list of all record and beneficial holders of Units as of the date of this Agreement with the name of each holder and number and type of Units held.

(b) At the Closing, the Units of the Company shall be recapitalized into Class A Units and the authorized equity interests of the Company shall consist of the following: (i) a total of 100 authorized Class A Units, all of which shall be issued and outstanding, and (ii) a total of 5.45 authorized Class A-1 Units, all of which shall be issued and outstanding, pursuant to the transactions contemplated by this Agreement.

(c) Except as set forth in Schedule 3.2(a) of the Disclosure Schedule, (i) there are no equity interests of the Company issued or outstanding; (ii) there are no existing options, warrants, calls, preemptive rights, rights of first refusal, equity appreciation, phantom stock or similar rights, indebtedness having general voting rights or Voting Debt or subscriptions or other rights, agreements, arrangements or commitments of any character, relating to the issued or unissued equity interests of the Company or any Subsidiary obligating the Company or any Subsidiary to issue, transfer or sell or cause to be issued, transferred or sold any equity interests or Voting Debt of, or other equity interest in, the Company or any Subsidiary or securities convertible into or exchangeable for such equity interests, or obligating the Company or any Subsidiary to grant, extend or enter into any such option, warrant, call, subscription or other right, agreement, arrangement or commitment and (iii) there are no outstanding contractual obligations of the Company or any Subsidiary to repurchase, redeem or otherwise acquire any Units or other equity interests of any Subsidiary or to provide funds to make any investment (in the form of a loan, capital contribution or otherwise) in any other entity.

(d) There are no voting trusts or other agreements or understandings to which the Company is a party with respect to the voting of the equity interests of the Company.

(e) No Indebtedness of the Company or any Subsidiary contains any restriction upon (i) the prepayment of any of such Indebtedness, (ii) the incurrence of Indebtedness by the Company, or (iii) the ability of the Company to grant any Lien on its properties or assets.

Section 3.3 Authorization. The Company has the requisite limited liability company power and authority to execute and deliver this Agreement and the other agreements, documents and instruments of the Company contemplated hereby and to perform its obligations hereunder and thereunder. All action on the part of the Company and its Manager and Members necessary for the authorization, execution, delivery and performance of this Agreement and the authorization, sale, issuance and delivery of the Class A-1 Units and the performance of the Company’s obligations hereunder has been taken or will be taken prior to the Closing.

(a) This Agreement, and the Transaction Documents to which the Company is a party, shall be, when executed and delivered by the Company, the valid and binding obligations, of the Company enforceable in accordance with their respective terms, subject to (i) laws of general application relating to specific performance, injunctive relief or other equitable remedies, (ii) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (iii) federal or state laws limiting enforceability of the indemnification provisions in Article IX of this Agreement.

(b) When issued, sold and delivered in accordance with the terms of this Agreement for the consideration provided for herein, the Class A-1 Units shall be duly authorized, validly issued, fully paid and non-assessable and shall be free of any Liens, other than restrictions on transfer under the New Operating Agreement, the Unitholders Agreement and applicable state and federal securities laws.

(c) No Member of the Company has any right of first refusal or any preemptive rights or similar rights in connection with the issuance and sale of the Class A-1 Units.

Section 3.4 No Conflict; Consent.

(a) No notice to or filing with, and no permit, authorization, waiver, consent or approval of, any Governmental Entity, or any other Person is necessary for the execution, delivery or performance of this Agreement and the other agreements contemplated hereby by the Company or the consummation by the Company of the transactions contemplated by this Agreement, except for (i) filings required under Regulation D of the Securities Act; (ii) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities laws and the securities laws of any foreign country; (iii) such antitrust filings as may be required in any jurisdiction; and (iv) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, could not be reasonably expected to have a Company Material Adverse Effect.

(b) No consent, order, authorization, approval, declaration or filing is required on the part of the Company for or in connection with the execution, delivery or performance of this Agreement and the other agreements, documents and instruments of the Company contemplated hereby. Neither the execution and delivery of this Agreement by the Company, the consummation by the Company of the transactions contemplated hereby nor compliance by the Company with any of the provisions hereof will (i) conflict with or result in any breach of any provision of the Current Operating Agreement, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration or result in the creation of any Lien) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, permit, authorization, franchise, contract, agreement or other instrument or obligation to which the Company is a party or by which it or any of its properties or assets may be bound or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to the Company or any Subsidiary, or their respective properties or assets.

Section 3.5 Financial Statements.

(a) The Company has previously provided Purchaser with the Seller's consolidated audited balance sheet as of December 28, 2007 (the "December Balance Sheet") and its unaudited consolidated balance sheet as of October 24, 2008 (the "Latest Balance Sheet"), and the related statements of operations and, with respect to the audited financial statements, statements of cash flows for the preceding two (2) fiscal years (which do not include Seller) including the notes thereto, and the consolidated statement of income of Seller for the 10-month period ended October 24, 2008 (which does not contain footnotes) (together the "Financial Statements"). The Financial Statements for the years ended December 29, 2006, and December 28, 2007, have been audited by Mann, Urrutia, Nelson CPAs & Associates, LLP, the Company's and the Seller's independent accountants. The Financial Statements have been prepared in accordance with GAAP consistently applied, are true and correct in all material respects and fairly present the financial position of Seller, the Company, and the Subsidiaries on a consolidated basis as of such dates and their results of operations and cash flows for such fiscal periods except, in the case of such unaudited statements, for normal recurring year end adjustments which adjustments will not be material, either individually or in the aggregate, and the absence of footnotes.

(b) Seller, the Company and the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general and specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Since January 1, 2007, none of Seller, the Company or any of the Subsidiaries and, to the Company's Knowledge, no manager, officer, employee, auditor, accountant or representative of Seller, the Company or any Subsidiary has received or otherwise become aware of any complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Seller, the Company or any Subsidiary or of their respective internal controls over financial reporting, including any complaint, allegation, assertion or claim that Seller, the Company or any Subsidiary has engaged in questionable accounting or auditing practices. There have been no instances of fraud, whether or not material, that occurred during any period covered by the Financial Statements involving the management of Seller, the Company or the Subsidiaries or other employees or consultants of Seller, the Company or the Subsidiaries who have a role in preparation of the Financial Statements.

Section 3.6 Absence of Certain Changes. Since the date of the December Balance Sheet, Seller, the Company and each Subsidiary has operated only in the usual and ordinary course of business, and none of Seller, the Company or any Subsidiary has:

(a) suffered any Company Material Adverse Effect;

(b) incurred any liabilities or obligations (whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise) except items incurred in the ordinary course of business and consistent with past practice, none of which exceeds $250,000 in the aggregate or $25,000 individually (counting obligations or liabilities arising from one transaction or a series of similar transactions, and all periodic installments or payments under any lease or other agreement providing for periodic installments or payments, as a single obligation or liability), or increased, or experienced any change in any assumptions underlying or methods of calculating, any bad debt, contingency or other reserves, other than trade payables incurred in the ordinary course of business and consistent with past practice;

(c) paid, discharged or satisfied any claim, liabilities or obligations (whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise) other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of liabilities and obligations reflected or reserved against in the Latest Balance Sheet or incurred since the date of the Latest Balance Sheet in the ordinary course of business, consistent with past practice and not material in the aggregate;

(d) permitted or allowed any of its property or assets (real, personal or mixed, tangible or intangible) to be subjected to any Liens except for liens for real and personal property Taxes not yet due and payable;

(e) written down the value of any of its inventory (including write-downs by reason of shrinkage or mark-down) or written off as uncollectible any notes or accounts receivable, except for immaterial write-downs and write-offs in the ordinary course of business and consistent with past practice;

(f) cancelled any debts or waived any claims or rights of material value;

(g) sold, transferred, or otherwise disposed of any of its properties or assets (real, personal or mixed, tangible or intangible) except for sales of product in the ordinary course of business and consistent with past practice;

(h) granted or committed to any increase in the compensation or benefits of the Manager or any member of senior management, officer or director of Seller, the Company or any Subsidiary (including any such increase pursuant to any Benefit Plan) or any increase in the compensation or benefits payable or to become payable to the Manager or any member of senior management, officer or director of the Company or any Subsidiary, except in the ordinary course of business and consistent with past practice;

(i) disposed of, granted, obtained, or permitted to lapse any rights to, any Intellectual Property except for non-material Intellectual Property as necessary in the ordinary conduct of business and consistent with past practice;

(j) disposed of or disclosed to any Person, other than representatives of Purchaser and other than pursuant to any Material Contract, any Trade Secret;

(k) made any change in severance policy or practices or established, amended or agreed to establish or amend any Benefit Plan, except as required by applicable law;

(l) made any capital expenditure or acquired any property, plant and equipment for a cost in excess of $100,000 per fiscal quarter in the aggregate;

(m) declared, paid or set aside for payment any dividend or other distribution in respect of its equity interests or redeemed, purchased or otherwise acquired, directly or indirectly, any equity interests or other securities of Seller, the Company or any Subsidiary;

(n) filed any amendment to any Tax Return, made any election relating to Taxes, change any election relating to Taxes already made, adopted or changed any accounting method relating to Taxes, entered into any closing agreement relating to Taxes, settled any claim or assessment relating to Taxes, consented to any claim or assessment relating to Taxes or any waiver of the statute of limitation for any such claim or assessment or surrendered any right to claim a refund of Taxes;

(o) paid, loaned or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement or arrangement with, any of its officers, managers or unitholders or any affiliate or associate of any of its officers, managers or unitholders except for (i) managers' fees, and (ii) compensation to officers at rates not inconsistent with the Company's past practice;

(p) agreed to be bound by any exclusivity provisions or similar such provisions under which the Company is restricted (either directly or through a third party appointed to do the same) from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area;

(q) agreed to be bound by any "most favored nations" pricing or commercial terms in any contract, agreement or other commitment; or

(r) agreed, whether in writing or otherwise, to take any action described in this Section 3.6.

Since the Latest Balance Sheet date, none of the Persons with which the Company or any Subsidiary has a material business relationship has given notice in writing or other indication of any intention to cancel or otherwise terminate a business relationship with the Company or any Subsidiary and, to the Company's Knowledge, no event has occurred or failed to occur which (i) would reasonably be expected to result in the cancellation or termination of such a business relationship or (ii) would entitle any such entity or customer to terminate such business relationship.

Section 3.7 No Undisclosed Liabilities. Except as specifically provided in the Latest Balance Sheet or the Material Contracts, each of the Company and the Subsidiaries has no liabilities or obligations (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise) that were not fully reflected or fully reserved against in the Latest Balance Sheet other than liabilities or obligations incurred in the ordinary course of business, consistent with past practice and that are not material in the aggregate.

Section 3.8 No Default. None of the Company, the Seller or any Subsidiary is in default or violation of (and no event has occurred which with notice or the lapse of time or both would constitute a default or violation of or could cause acceleration of obligations or loss of rights under) any term, condition or provision of (i) the Current Operating Agreement or any organizational document of Seller or any Subsidiary, (ii) any note, bond, mortgage, indenture, license, contract, agreement or other instrument or obligation to which the Company, Seller or any Subsidiary is a party or by which it or any of its properties or assets may be bound, (iii) any order, writ, injunction, decree, or (iv) any statute, rule or regulation applicable to the Company, Seller or any Subsidiary, except with respect to clause (ii), for such defaults or violations that, individually or in the aggregate, would not result in a Company Material Adverse Effect. To the Company's Knowledge, none of the Company, Seller or any Subsidiary may be liable for liquidated damages under any contract, agreement or other instrument or obligation to which the Company, Seller or any Subsidiary is a party or by which it or any of its properties or assets may be bound.

Section 3.9 Litigation. There is no action, suit, proceeding, arbitration or investigation pending before any Government Entity or arbitration or mediation panel or, to the Company's Knowledge, threatened (a) in which Seller, the Company or any Subsidiary is a party, or, (b) to the Company's Knowledge, in relation to the affairs of Seller, the Company or any Subsidiary, in which any member, officer, director, manager or employee of Seller, the Company or any Subsidiary is a party. None of Seller, the Company or any Subsidiary is a party or subject to the provisions of any order or decree of any Governmental Entity. There is no action, suit, proceeding, arbitration or investigation which Seller, the Company or any Subsidiary presently intends to initiate. To the Company's Knowledge, there are no occurrences, facts, or circumstances which would give rise to a claim or potential claim against Seller, the Company or any Subsidiary or those to which Seller, the Company or any Subsidiary owes any obligation of indemnification or defense, for the violation of the rights of any third party or the violation of any law, order, or regulation. There are no actions, suits, proceedings or orders pending or, to the Company's Knowledge, threatened against or affecting the Company or any Subsidiary at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would adversely affect the consummation of the transactions contemplated hereby.

Section 3.10 Compliance with Laws. Each of Seller, the Company and each Subsidiary is in compliance with, and have not violated any applicable law, rule or regulation of any United States federal, state, local, or foreign government or agency thereof which materially affects the business, properties or assets of Seller, the Company and the Subsidiaries, taken as a whole, and no notice, charge, claim or action has been received by Seller, the Company or any Subsidiary or has been filed, commenced or, to the Company's Knowledge, threatened against Seller, the Company or any Subsidiary alleging any such violation. All material franchises, licenses, permits, authorizations and approvals required under such laws, rules and regulations, and all material franchises, licenses, permits, authorizations and approvals of non-governmental authorities which are required by Seller, the Company and its Subsidiaries are set forth on Schedule 3.10 of the Disclosure Schedule and are in full force and effect. The Company and each Subsidiary are in compliance with, and have not violated any such franchises, licenses, permits, authorizations and approvals. To the Company's Knowledge, there is no threatened suspension, revocation or invalidation of any such franchises, licenses, permits, authorizations and approvals.

Section 3.11 Taxes.

(a) The Company and the Subsidiaries have timely filed with the appropriate Tax Authorities all Tax Returns required to be filed, and such Tax Returns are true, correct and complete;

(b) The Company and the Subsidiaries have paid in full all Taxes which are or have become due and payable (whether or not shown on any Tax Return) other than those (i) currently payable without penalty or interest, or (ii) being contested in good faith by appropriate proceedings properly instituted and diligently pursued, and in the case of both clauses (i) and (ii) are fully reserved for on the Latest Balance Sheet. All liabilities for Taxes attributable to the period commencing on the date following the date of the December Balance Sheet have been incurred in the ordinary course of business and are consistent in type and amount with Taxes attributable to similar business activity conducted in prior periods;

(c) There are no liens for Taxes upon any property or assets of the Company or any Subsidiary except for liens for real and personal property Taxes not yet due and payable and for which adequate reserves have been taken;

(d) No Audits are presently pending with regard to any Taxes or Tax Returns of the Company or any Subsidiary, and no such Audit is threatened, and no deficiency or adjustment for any Taxes has been proposed, asserted, or assessed against the Company or any Subsidiary. No material adjustments have been asserted as a result of any Audit which have not been resolved and fully paid, and no issue has been raised by any Tax Authority in any Audit of the Company or any Subsidiary that, if raised with respect to any other period not so audited, could be expected to result in a proposed deficiency for any period not so audited. Neither the Company nor any Subsidiary has ever received any notice of any claim made by a Tax Authority in a jurisdiction where the Company or any Subsidiary does not file a Tax Return, that the Company or any Subsidiary is or may be subject to taxation by that jurisdiction;

(e) There are no outstanding requests, agreements, consents or waivers to extend the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against the Company or any Subsidiary, and no power of attorney granted by the Company with respect to any Taxes or Tax Returns is currently in force;

(f) Neither the Company nor any Subsidiary has any liability for or in respect of the Taxes of, or determined by reference to the Tax liability of, another Person, except to the extent the Company and Subsidiaries Tax liability is consolidated with Seller;

(g) Neither the Company nor any Subsidiary is a party to, is bound by, or has any obligation under, any Tax sharing agreement, Tax allocation agreement, Tax indemnification agreement, agreement where liability is determined by reference to the Tax liability of a third party, or any similar agreement, contract, or arrangement;

(h) The Company has not made a "check-the-box" election to be taxed as a corporation pursuant to Treas. Reg. § 301.7701-3. At all times prior to the completion of the Seller's obligations in Section 6.7, the Company is and was properly classified as an entity disregarded as separate from Seller for U.S. federal income Tax purposes in accordance with Treas. Reg. § 301.7701-3. At all times after the completion of the Seller's obligations in Section 6.7, the Company is properly classified as a partnership for U.S. federal income Tax purposes;

(i) At all times after the completion of the Seller's obligations in Section 6.7, each Subsidiary is properly classified as an entity disregarded as separate from the Company for U.S. federal income Tax purposes in accordance with Treas. Reg. § 301.7701-3;

(j) The Company has not agreed nor is it required to include in income any adjustment under either Section 481(a) or 263A of the Code (or an analogous provision of state, local, or foreign law) by reason of a change in accounting method or otherwise which would have an effect on any taxable period following the Closing;

(k) Neither the Company nor any Subsidiary has entered into any closing agreements with any Tax Authorities and has no pending requests for letter rulings or similar administrative determinations with any Tax Authority;

(l) The Company has never had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country;

(m) The Company has never engaged in any transaction that gives rise to: (x) a registration obligation under Section 6111 of the Code or the Treasury Regulations promulgated thereunder; (y) a list maintenance obligation under Section 6112 of the Code or the Treasury Regulations promulgated thereunder; or (z) a disclosure obligation as a "reportable transaction" under Section 6011 of the Code or the Treasury Regulations promulgated thereunder;

(n) All amounts required to be collected or withheld by the Company or any Subsidiary with respect to Taxes have been duly collected or withheld and any such amounts that were or are required to be remitted to any Tax Authority have been duly and timely remitted. All agreements between the Company or any Subsidiary with their customers require the customer to pay all applicable sales tax and such sales tax is collectible in full by the Company or the Subsidiary in the ordinary course of business; and

(o) All of the property of the Company and the Subsidiaries that is subject to property Tax has been properly listed and described on the property tax rolls of the appropriate taxing jurisdiction for all periods prior to Closing and no portion of such property constitutes omitted property for property tax purposes.

Section 3.12 Employee Benefits.

(a) Schedule 3.12 of the Disclosure Schedule contains a true, complete and correct list of each employee benefit plan (including, without limitation, any "employee benefit plan," as defined in Section 3(3) of ERISA and employee benefit plans such as foreign plans, that are not subject to the provisions of ERISA) and any employment, change of control, bonus, pension, profit sharing, retirement, deferred compensation, incentive compensation, unit option or purchase, equity-based compensation, consulting, vacation, severance, disability, death benefit, hospitalization, life or other benefits-related insurance, supplemental unemployment benefits or other plan, program, policy, agreement, arrangement or material understanding (whether formal or informal or whether or not legally binding), (i) sponsored, maintained or contributed to or required to be contributed to by the Company and its Subsidiaries or by any trade or business, whether or not incorporated (an "ERISA Affiliate"), that together with the Company would be deemed a "single employer" within the meaning of Section 4001(b)(1) ERISA, for the benefit of any current or former employee, manager or consultant of the Company, or (ii) with respect to which the Company or any Subsidiary could have any liability (all the foregoing being herein referred to as "Benefit Plans"). The Company has made available to Purchaser a true and correct copy of all documents related to the Benefit Plans, including but not limited to, (u) as they exist, the three most recent annual reports or Form 5500 Series filings if required under ERISA, filed with the Internal Revenue Service (the "IRS") with respect each Benefit Plan, (v) a copy of each written Benefit Plan (including all amendments thereto) or a written description of any Benefit Plan that is not otherwise in writing and the most recent Summary Plan Description, any Summary of Material Modifications or Form 5500 Series if required under ERISA, (w) each trust agreement and group annuity contract, if any, relating to such Benefit Plan, (x) the most recent actuarial report or valuation relating to each Benefit Plan subject to Title IV of ERISA or providing post-retirement health and/or life insurance benefits, (y) a current determination letter received from the Internal Revenue Service with respect to each Benefit Plan intended to qualify under Section 401(a) of the Code and (z) all contracts relating to the Benefit Plans with respect to which the Company or any ERISA Affiliate may have any liability, including, but not limited to, insurance contracts, investment management agreements, subscription and participants agreements and record keeping agreements.

(b) No Benefit Plans are subject to Title IV of ERISA. No event has occurred and to the Company's Knowledge, there exists no condition or set of circumstances which are reasonably likely to occur in connection with which the Company or any Subsidiary would be subject to any liability (except liability for benefits claims and funding obligations payable in the ordinary course), under ERISA, the Code or any other applicable law.

(c) With respect to Benefit Plans, in the aggregate, there are no funded benefit obligations for which contributions have not been timely made or properly accrued and there are no unfunded benefit obligations which have not been accounted for by reserves, or otherwise properly footnoted in the Financial Statements. There are no outstanding unfunded U.K. pension plan liabilities.

(d) Each of the Benefit Plans is and has been administered in compliance with its terms and with applicable laws and regulations, including, but not limited to, ERISA, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Health Insurance Portability and Accountability Act of 1996, the Code and federal and state securities laws.

(e) Each of the Benefit Plans that is intended to be a qualified plan within the meaning of Section 401(a) of the Code has been determined by the IRS to be so qualified and nothing has occurred to cause the loss of such qualified or tax-exempt status, or the

Company has applied to the IRS for such a determination prior to the expiration of the requisite period under applicable Treasury Regulations or IRS pronouncements in which to apply for such a determination and to make any amendments necessary to obtain a favorable determination, or has been established under a standardized prototype plan for which an IRS opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer. Each fund established under a Benefit Plan that is intended to satisfy the requirements of Section 501(c)(9) of the Code has so satisfied such requirements.

(f) Neither the Company nor any Subsidiary has any obligations for retiree health, medical or life insurance benefits under any Benefit Plan other than (i) coverage mandated by applicable laws, (ii) death or retirement benefits under any "employee pension plan" as defined in Section 3(2) of ERISA, or (iii) benefits the full cost of which is borne by the current or former employee (or beneficiary thereof). Each Benefit Plan that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code is in material compliance with such section.

(g) No Benefit Plan is a "multiemployer pension plan," as such term is defined in Section 3(37) of ERISA or a "multiple employer plan" as such term is defined in Section 413(c) of the Code.

(h) Each Benefit Plan can be terminated within a period of thirty (30) days, without payment of any additional compensation or amount or the additional vesting or acceleration of any benefits.

(i) No Benefit Plan is under actual or, to the Company's Knowledge, threatened investigation, audit or review by any governmental agency, or the subject of any pending, or to the Company's Knowledge, threatened claim, lawsuit, arbitration or other proceeding.

Section 3.13 Change in Control. Except as set forth in Schedule 3.13 of the Disclosure Schedule, the Company is not a party to any contract, agreement or understanding which contains a "change in control," "potential change in control" or similar provision. The consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of any additional acts or events) (i) result in any payment (whether of severance pay or otherwise) becoming due from the Company to any Person, or accelerate the time of payment or vesting, or increase the amount of or otherwise enhance any benefit due from the Company to any Person, (ii) result in the termination, modification or cancellation of or default under any contract, franchise, license, permit, authorization or approval or (iii) result in the payment of any amounts that would be reasonably likely to be nondeductible under Section 280G of the Code.

Section 3.14 Intellectual Property.

(a) The Company and its Subsidiaries own or have a valid right to use all trademarks, service marks, trade names, Internet domain names, designs, logos, slogans, and general intangibles of like nature, together with all goodwill, registrations and applications related to the foregoing (collectively, "Trademarks"); patents and industrial design registrations or applications (including any continuations, divisional, continuations-in-part, renewals, reissues, and applications for any of the foregoing) (collectively, "Patents"); copyrights (including any registrations and applications therefor); "maskworks" (as defined under 17 U.S.C. § 901) and any applications and registrations therefor; Software; technology; inventions, whether or not patented, patentable, tested or reduced to practice; trade secrets and other confidential information, know-how, proprietary processes, formulae, algorithms, models, and methodologies (collectively, "Trade Secrets," and together with the foregoing, the "Intellectual Property") used or held for use in or necessary for the conduct of the Business.

(b) Schedule 3.14(b)(1) of the Disclosure Schedule sets forth, a complete and accurate list of all U.S. and foreign (i) Patents, (ii) Trademark registrations (including Internet domain registrations) and applications and material unregistered Trademarks and (iii) copyright and maskwork registrations and applications, and material unregistered copyrights, including those in Software, indicating for each, the applicable jurisdiction, registration number (or application number), record owner and date issued (or date filed), for the Intellectual Property owned by the Company and the Subsidiaries. Schedule 3.14(b)(2) of the Disclosure Schedule sets forth a complete and accurate list of all license agreements, assignment agreements, covenants not to sue, and development agreements (other than commercially available "shrink-wrap" or "click-through" licenses acquired in the ordinary course of business having an acquisition price of less than $10,000 for all such related licenses) granting or restricting any right to use or practice any rights under any Intellectual Property, whether the Company or a Subsidiary is the licensee or licensor thereunder, and any settlement agreements or royalty agreements relating to any Intellectual Property to which the Company or any Subsidiary is a party or otherwise bound (collectively, the "License Agreements"), indicating for each the title, the parties, date executed or entered into, and the Intellectual Property covered thereby. The Company has furnished to Purchaser true and correct copies of all License Agreements (or descriptions thereof, in the case of oral contracts).

(c) The Intellectual Property owned by the Company and the Subsidiaries is free and clear of all Liens, and the Company or a Subsidiary is listed in the records of the appropriate United States, state, or foreign agency as the sole and exclusive owner of record and beneficial owner for each application and registration listed in Schedule 3.14(b)(1) of the Disclosure Schedule. With respect to any Patents in which the Company or a Subsidiary has an ownership interest: (i) each has been prosecuted in compliance with all applicable rules, policies and procedures of the U.S. Patent and Trademark Office or applicable foreign agency; and (ii) to the Company's and the Subsidiaries' Knowledge there is no prior art or other facts that could render any of the claims in the patents invalid or unenforceable.

(d) The Intellectual Property owned by the Company and the Subsidiaries and, to the Company's Knowledge, any Intellectual Property used by or held for use by the Company or any Subsidiary, is valid and subsisting, in full force and effect, and has not been canceled, expired or been abandoned. There is no pending or threatened opposition, interference or cancellation proceeding before any court or registration authority in any jurisdiction against the registrations listed in Schedule 3.14(b)(1) of the Disclosure Schedule, or, to the Company's Knowledge, against any material Intellectual Property licensed to the Company or any Subsidiary.

(e) The products, technology and business of the Company and the Subsidiaries as currently conducted, and the products, technology and business that the Company or any Subsidiary currently expects to commercially develop or conduct as set forth in Schedule 3.14(e)(l) of the Disclosure Schedule do not, to the Company's Knowledge, infringe upon, misappropriate, dilute or violate any Intellectual Property owned or controlled by any third party (either directly or indirectly such as through contributory infringement or inducement to infringe). There are no claims or suits pending or, to the Company's Knowledge, threatened, and neither the Company nor a Subsidiary has received any written notice (or to the Company's Knowledge, any oral notice) of a third party claim or suit (1) alleging that its activities or the conduct of its businesses infringes upon, misappropriates, dilutes, violates, or constitutes the unauthorized use of the Intellectual Property rights of any third party other than as set forth in Schedule 3.14(e)(2) or (2) challenging the ownership, use, validity or enforceability of any Intellectual Property owned, used or held for use by the Company or any Subsidiary in the Business, and there has been no such written claim (or, to the Company's Knowledge, any oral claim) asserted or, to the Company's Knowledge, threatened in the past six (6) years against the Company or any Subsidiary or, to the Company's Knowledge, any other Person.

(f) There are no settlements, forbearances to sue (other than licenses granted in the ordinary course), consents, judgments, or orders or similar obligations which (i) restrict the Company's or any Subsidiary's rights to use any Intellectual Property, (ii) restrict the Company's or any Subsidiary's business in order to accommodate a third party's Intellectual Property or (iii) permit third parties to use any Intellectual Property owned or controlled by the Company or any Subsidiary. Neither the Company nor any Subsidiary has licensed or sublicensed its rights in any material Intellectual Property other than pursuant to the License Agreements, and no royalties, honoraria or other fees are payable by the Company or any Subsidiary for the use of or right to use any Intellectual Property, except pursuant to the License Agreements. The License Agreements are valid and binding obligations of all parties thereto, enforceable in accordance with their terms, and there exists no event or condition which has occurred or exists which constitutes or which, with or without notice, the happening of any event and/or the passage of time, will result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default by the Company or any Subsidiary or, to the Company's Knowledge, any other party under any such License Agreement, or could cause the acceleration of any obligation or loss of any rights of any party thereto or give rise to any right of termination or cancellation thereof. Each License Agreement (or description) sets forth the entire agreement and understanding between the Company or the Subsidiary and the other parties thereto.

(g) The Company and the Subsidiaries use commercially reasonable efforts to protect the confidentiality of their Trade Secrets. To the Company's Knowledge, no Trade Secret owned or used by the Company or any Subsidiary has been disclosed or authorized to be disclosed to any third party other than pursuant to a non-disclosure agreement that protects the Company's and the Subsidiaries' proprietary interests in and to such Trade Secrets in a commercially reasonable fashion. Neither the Company nor any Subsidiary nor, to the Company's Knowledge, any other party to any non-disclosure agreement relating to the Trade Secrets of the Company or any Subsidiary is in breach or default thereof.

(h) No current or former partner, manager, officer or employee of the Company or any Subsidiary (or any of their respective predecessors in interest) will, after giving effect to each of the transactions contemplated herein, own or retain any rights in or to, or have the right to receive any royalties as payment based on the assignment, transfer or license of, any of the Intellectual Property owned or used by the Company or any Subsidiary. Each such current or former partner, manager, officer or employee of the Company or any Subsidiary who has, in each case, been involved in the development or modification of any technology or Intellectual Property owned or purported to be owned by the Company or any its Subsidiaries, has executed a written agreement expressly assigning to the Company or a Subsidiary all right, title and interest in any inventions and works of authorship and all Intellectual Property rights therein and expressly obligating such Person to maintain the confidentiality of the Trade Secrets owned by or licensed to the Company or any Subsidiary and not to use such Trade Secrets for the benefit of any Person other than the Company or a Subsidiary.

(i) To the Company's Knowledge, no third party is misappropriating, infringing, diluting, or violating any Intellectual Property owned by the Company and its Subsidiaries and no such claims have been brought or threatened against any third party by the Company or any Subsidiary in the past six (6) years.

(j) The consummation of the transactions contemplated by this Agreement will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, the Company's or any Subsidiary's right to own, use, or hold for use any of the Intellectual Property as owned, used, or held for use in the conduct of the business as currently conducted and currently contemplated to be conducted. Neither this Agreement nor the transactions contemplated by this Agreement, will result in the Company, any Subsidiary or any of their Affiliates: (i) granting to any third party any incremental right to or with respect to any Intellectual Property owned by, or licensed to, any of them, (ii) being bound by, or subject to, any incremental non-compete or other incremental restriction on the operation or scope of their respective business, or (iii) being obligated to pay any incremental royalties or other amounts, or offer any incremental discounts, or being bound by any incremental "most favored pricing" terms to any third party. As used in this Section 3.14, an "incremental" right, non-compete, restriction, royalty, "most favored pricing" term or discount refers to a right, non-compete, restriction, royalty, "most favored pricing" term or discount, as applicable, in excess of the rights, non-competes, restrictions, royalties or discounts payable that would have been required to be offered or granted, as applicable, had the Parties not entered into this Agreement or consummated the transactions contemplated hereby.

(k) 3.14(k) of the Disclosure Schedule lists all Software (other than commercially available Software subject to "shrink-wrap" or "click-through" licenses acquired in the ordinary course of business having an acquisition price of less than $10,000 in for all such related licenses) owned, licensed, leased, or otherwise used by the Company and the Subsidiaries, and identifies which Software is owned, licensed, leased, or otherwise used, as the case may be. Schedule 3.14(k) of the Disclosure Schedule lists all Software sold, licensed, leased or otherwise distributed by the Company or any Subsidiary to any third party, and identifies which Software is sold, licensed, leased, or otherwise distributed as the case may be (the "Out-Licensed Software"). Neither the execution nor the consummation of this Agreement will result in a release from escrow of any Source Code in such Out-Licensed Software or the grant of incremental rights to a

Person with regard to such Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or could reasonably be expected to, result in the disclosure or delivery by the Company or any Subsidiary or any Person acting on its behalf to any Person of any Source Code in such Out-Licensed Software under any contract, and no material portions of such Source Code has been disclosed, delivered or licensed to a third party (other than deposits of Source Code with escrow agents pursuant to escrow agreements in the ordinary course of business, which deposits have not been released from escrow). With respect to the Software set forth in Schedule 3.14(k) of the Disclosure Schedule which the Company or any Subsidiary purports to own, such Software was either developed (i) by employees of the Company or a Subsidiary within the scope of their employment, or (ii) by independent contractors who have assigned their rights to the Company or a Subsidiary pursuant to written agreements. "Software" means any and all (A) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (B) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (C) descriptions, flow charts and other work product used to design, plan, organize and develop any of the foregoing, (D) the technology supporting any Internet site(s) operated by or on behalf of the Company or any Subsidiary; and (E) all documentation, including user manuals and training materials, relating to any of the foregoing. "Source Code" means computer software and code, in form other than object code form, including related programmer comments and annotations, help text, data and data structures, instructions and procedural, object oriented and other code, which may be printed out or displayed in human readable form.

(l) The Company and the Subsidiaries own or have the right to use (including, without limitation, the rights to copy and to distribute and to sell to any party) all Software developed by the Company or any Subsidiary, whether developed for itself (as part of its core technology or otherwise) or on behalf of any third party.

(m) With respect to the use of the Software in the conduct of the Business, (i) no capital expenditures are necessary with respect to such use other than capital expenditures in the ordinary course of business that are consistent with the past practice of the Company and the Subsidiaries, (ii) each of the Company and its Subsidiaries has not experienced any material defects in such Software, including any material error or omission in the processing of any transactions other than defects which have been corrected, and (iii) no such Software contains any device or feature designed to disrupt, disable, or otherwise impair the functioning of any Software.

(n) Schedule 3.14(n) of the Disclosure Schedule sets forth a list describing the title, date, and parties (as applicable) to all license agreements for Open Source Materials to which the Company or any Subsidiary is a party and describes the manner in which such Open Source Materials have been utilized, including, without limitation, whether and how the Open Source Materials have been modified and/or distributed by the Company or any Subsidiary. Neither the Company nor any Subsidiary has incorporated Open Source Materials into, or combined Open Source Materials with, its products. "Open Source Materials" means all Software or other material that is distributed as "open source software" or under a similar open source licensing or distribution model, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL) or Mozilla Public License (MPL).

(o) The Company and the Subsidiaries have at all times complied in all material respects with all applicable Laws and contractual obligations as well as their own rules, policies, and procedures, in each case relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by the Company or any Subsidiary in the conduct of the Business. No claims have been asserted or threatened in writing or, to the Company's Knowledge, otherwise threatened against the Company or any Subsidiary alleging a material violation of any Person's privacy or personal information or data rights and the consummation of the transactions contemplated hereby will not breach or otherwise cause any violation of any Law, contractual obligation, or rule, policy, or procedure related to privacy, data protection, or the collection and use of personal information collected, used, or held for use by the Company in the conduct of the Business. The Company and the Subsidiaries use commercially reasonable efforts to ensure that such information is protected against unauthorized access, use, modification, or other misuse.

(p) All products of the Company or any Subsidiary conform in all material respects with all applicable contractual commitments and all express warranties, the Company's and the Subsidiaries' published product specifications and with all regulations, certification standards and other requirements of any applicable governmental entity. The channel activities of the Company and its Subsidiaries related to sales or distribution of the products of the Company or any Subsidiary conform in all material respects with all applicable contractual commitments. The Company and the Subsidiaries have no liability (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise) for replacement or modification of any Company product or other damages in connection therewith other than in the ordinary course of business. There are no material defects in the design of, or technology embodied in, any Company product which impair or are likely to impair the intended use of such product of the Company or any Subsidiary. There is no presently pending, or, to the Company's Knowledge, threatened, and, to the Company's Knowledge, there is no basis for, any civil, criminal or administrative actions, suits, demands, claims, hearings, notices of violation, investigations, proceedings or demand letters relating to any alleged hazard or alleged defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of express or implied warranty or representation, relating to any product of the Company or any Subsidiary. Neither the Company nor any Subsidiary has extended to any of its customers any written product warranties, indemnifications or guarantees that deviate in any material respect from the standard product warranties, indemnification arrangements or guarantees of the Company or any Subsidiary, a copy of which has been provided to Purchaser. The Company's or any Subsidiary's liability for breach of warranty is limited to repair or replacement of products or nonconforming parts. The Company's and the Subsidiaries' aggregate liability for any breach of warranty for products manufactured or services provided prior to Closing shall not exceed the warranty reserve set forth in the Financial Statements. There are no material claims against the Company or any Subsidiary alleging any defects in the Company's or any Subsidiary's services or products, or alleging any failure of the products or services of the Company or any Subsidiary to meet applicable specifications, warranties or contractual commitments.

Section 3.15 Contracts and Commitments. Except as set forth on Schedule 3.15 of the Disclosure Schedule, with respect to Seller, the Company and the Subsidiaries taken as a whole:

(a) There are no contracts or commitments under which Seller, the Company or any Subsidiary is required to pay in excess of $100,000 or which extend for a term of more than one year after the Closing;

(b) There are no outstanding sales contracts, commitments, or proposals of Seller, the Company or any Subsidiary that call for the payment or receipt of more than $100,000 in any fiscal quarter or which Seller, the Company or any Subsidiary believes will result in any loss to Seller, the Company or any Subsidiary, as the case may be, upon full completion or performance thereof;

(c) There are no outstanding contracts with managers, officers, employees, agents, consultants, advisors, salesmen, sales representatives, distributors, or dealers or any agreement or arrangement providing for the payment of any bonus or commission based on sales or earnings;

(d) Seller, the Company and each Subsidiary are not in default, nor to the Company's Knowledge is there any basis for any valid claim of default, under any contract made or obligation owed by Seller, the Company or any Subsidiary;

(e) Seller, the Company and each Subsidiary are not restricted by any contract to which they are individually a party from carrying on their respective businesses anywhere in the world;

(f) There are no material liabilities or obligations with respect to the return of inventory or merchandise in the possession of wholesalers, distributors, retailers, or other customers;

(g) There are no obligations for borrowed money, including guarantees of or agreements to acquire any such obligation of others;

(h) There are no outstanding loans to any Person;

(i) There is no power of attorney outstanding or any obligations or liabilities (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise), as guarantor, surety, co-signer, endorser, co-maker or indemnitor in respect of the obligation of any Person;

(j) None of the employees, officers, managers, directors or equity owners of Seller, the Company or the Subsidiaries have any interest in any property, real or personal, tangible or intangible, including without limitation the rights relating to the Intellectual Property, that is used in the conduct of the Business;

(k) There are no outstanding contracts under which the amount payable is dependent upon the revenue, income or other similar measure of Seller, the Company, any Subsidiary or any other Person;

(l) There are no outstanding contracts, licenses, leases, agreements or other arrangements with respect to any Owned Property;

(m) There are no outstanding contracts, agreements, arrangements or understandings relating to or involving any franchise, partnership, joint venture or other similar arrangement;

(n) There are no outstanding contracts, agreements, arrangements or understandings with respect to mergers or acquisitions, sales of securities or sales of assets (other than sales of assets in the ordinary course of business consistent with past practice), or investments by Seller, the Company or any Subsidiary including any such contracts involving earnouts or seller financing;

(o) There are no outstanding contracts, agreements, arrangements or understandings with governmental agencies, departments or authorities;

(p) There are no contracts, agreements, arrangements or understandings with any officer, employee, director, agent, manager, consultant or advisor of Seller, the Company or any of the Subsidiaries providing for the acceleration of vesting or payment of any amounts of the vesting of any additional rights upon the occurrence of a change of control of Seller, the Company or any Subsidiary or upon the occurrence of any of the transactions contemplated by this Agreement or the Unitholders Agreement; and

(q) There are no agreements, contracts, commitments, or restrictions that are material to the business, financial condition, working capital, assets, liabilities (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise), reserves or operations of Seller, the Company or any of the Subsidiaries or which require the making of any charitable contribution.

All of the contracts listed in Schedule 3.15 of the Disclosure Schedule, including all amendments or modifications thereto, all leases listed on Schedule 3.20 of the Disclosure Schedule and all License Agreements are sometimes collectively referred to as "Material Contracts." The Company has furnished to Purchaser true and correct copies of all Material Contracts (or descriptions thereof, in the case of oral contracts). Each Material Contract (or description) sets forth the entire agreement and understanding between Seller, the Company, the Subsidiaries and the other parties thereto. Each Material Contract is valid, binding and in full force and effect. There is no event or condition which has occurred or exists which constitutes or which, with or without notice, the happening of any event and/or the passage of time, could constitute a default or breach under any such Material Contract by Seller, the Company or any Subsidiary or, to the Company's Knowledge, any other party thereto, or could cause the acceleration of any obligation or loss of any rights of any party thereto or give rise to any right of termination or cancellation thereof. The Company has no reason to believe that the parties to any Material Contract will not fulfill their obligations thereunder in all material respects.

Section 3.16 Employment and Labor Matters.

(a) (i) There is no labor strike, dispute, slowdown, stoppage or lockout actually pending, or to the Company's Knowledge, threatened against or affecting the Company or any Subsidiary and since the Company's inception there has not been any such action; (ii) neither the Company nor any Subsidiary is a party to or bound by any collective bargaining or similar agreement with any labor organization, or work rules or practices agreed to with any labor organization or employee association applicable to employees of the Company or any Subsidiary; (iii) none of the employees of the Company or any Subsidiary are represented by any labor organization or employee association and to the Company's Knowledge there are no current union organizing activities among the employees of the Company or any Subsidiary and no question concerning representation exist concerning such employees; (iv) the Company has provided to Purchaser true, correct and complete copies of all written personnel policies, rules or procedures applicable to employees of the Company and its Subsidiaries; (v) the Company and the Subsidiaries are and have at all times been, in material compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment, wages, hours of work, overtime classification, immigration, equal employment opportunity, and occupational safety and health, and are not engaged in any unfair labor practices as defined in the National Labor Relations Act or other applicable law, ordinance or regulation, and are, and have at all times been, in compliance with all applicable laws respecting the classification of employees and independent contractors, (vi) there is no unfair labor practice charge, charge of discrimination or other complaint against the Company or any Subsidiary pending or, to the Company's Knowledge, threatened before the National Labor Relations Board, the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing or any other agency responsible for the prevention of unlawful employment practices; and (vii) there are no complaints, controversies, charges, lawsuits or other proceedings pending or, to the Company's Knowledge, threatened to be brought by any applicant for employment or current or former employees alleging breach of any express or implied contract for employment, any law or regulation governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship. There are no employment contracts, severance agreements, retention agreements, change in control agreements or confidentiality agreements (other than standard employee proprietary information and invention agreements) with any employees of the Company or any Subsidiary. The execution of this Agreement and the consummation of the transactions contemplated hereby will not result in a breach or other violation of any collective bargaining agreement or any other employment contract or arrangement to which the Company or any Subsidiary is a party. For purposes of this Section 3.16(a), the term "employees of the Company" or similar terminology includes employees of Seller who will be transferred to the Company on or prior to the Closing Date.

(b) Subject to applicable law, the Company has provided Purchaser with the names, titles, base salary or wage rate, overtime classification, most recent bonus amount, if any, and start date as of the most recent practicable date for employees of Seller, the Company and the Subsidiaries.

(c) From the enactment of the Worker Adjustment and Retraining Notification Act of 1988 (the "WARN Act") to the date of this Agreement, neither the Company nor any Subsidiary has effectuated (i) a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of the Company or any Subsidiary, or (ii) a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the Company or any Subsidiary, nor has the Company or any Subsidiary been affected by any transaction or engaged in layoffs or employment terminations sufficient in number to trigger application of any similar state or local law including California Labor Code Section 1400. None of the employees of the Company, Seller or any Subsidiary has suffered an "employment loss" (as defined in the WARN Act) during the ninety (90) day period prior to the execution of this Agreement.

Section 3.17 Environmental Matters.

(a) The Company and the Subsidiaries are in compliance with all Environmental Laws applicable to their properties, business, or operations in all material respects which compliance includes, but is not limited to, the possession by the Company and the Subsidiaries of all material permits and other governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof. Neither the Company nor any Subsidiary has received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company or any Subsidiary is not in full compliance with all Environmental Laws, and, to the Company's Knowledge, there are no circumstances that may prevent or interfere with such compliance in the future. All of the permits the Company and each Subsidiary with respect to Environmental Laws are listed on Schedule 3.17(a) of the Disclosure Schedule.

(b) There are no Environmental Claims pending, alleged or, to the Company's Knowledge, threatened against the Company or any Subsidiary or against any person or entity whose liability for any Environmental Claim the Company or any Subsidiary has retained or assumed either contractually or by operation of law.

(c) To the Company's Knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Materials of Environmental Concern on, at, in or from the indoor or outdoor environment at any location by or attributable to the Company or any Subsidiary, that could form the basis of any Environmental Claim against the Company, any Subsidiary or against any person or entity whose liability for any Environmental Claim the Company or any Subsidiary has retained or assumed either contractually or by operation of law. Without limiting the foregoing, the Company is not subject to any existing or unfulfilled obligation to perform remediation of environmental contamination or to otherwise address or respond to any release into the environment of Materials of Environmental Concern.

(d) The Company has provided to Purchaser all assessments, reports, data, results of investigations or audits, and other material information that is in the possession of or reasonably available to the Company and each Subsidiary regarding environmental matters pertaining to, or the environmental condition of, the properties, business or operations of the Company and the Subsidiaries, or the compliance (or noncompliance) by the Company and the Subsidiaries with any Environmental Laws.

Section 3.18 Insurance.

(a) Schedule 3.18(a) of the Disclosure Schedule contains an accurate and complete description of all policies of fire, liability, workmen's compensation and other forms of insurance owned or held by the Company and the Subsidiaries. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the date of the Closing will have been paid, no defaults are on-going and no notice of cancellation or termination has been received with respect to any such policy. Such policies will remain in full force and effect through the Closing, without the payment of additional premiums and will not in any material way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement.

(b) All pending claims, if any, made against the Company or any Subsidiary that are covered by insurance have been disclosed to and accepted by the appropriate insurance companies and are being defended by such appropriate insurance companies and are described in Schedule 3.18(b) of the Disclosure Schedule; no claim has been denied since the Company's inception. During the last six (6) months, no policy of the Company or any Subsidiary has been cancelled by the issuer thereof. During the last six (6) months, neither the Company nor any Subsidiary has been refused any insurance nor has coverage been limited by any insurance carrier.

Section 3.19 Title to Properties; Encumbrances.

(a) The Company and the Subsidiaries have good, valid and marketable title to all the tangible properties and assets which they purport to own (real, personal and mixed), and all the properties and assets purchased by the Company or any Subsidiary since the date of the December Balance Sheet, which subsequently acquired properties and assets (other than inventory) valued at over $100,000 are listed in Schedule 3.19(a) of the Disclosure Schedule. All such properties and assets are free and clear of all mortgages, title defects or objections, Liens, claims, charges, security interests or other encumbrances including, without limitation, leases, chattel mortgages, conditional sales contracts, collateral security arrangements and other title or interest retention arrangements, and are not, in the case of real property, subject to any rights of way, building use restrictions, exceptions, variances, reservations or limitations except, with respect to all such properties and assets, (i) Liens shown on the December Balance Sheet as securing specified liabilities or obligations and liens incurred in connection with the purchase of property and/or assets, if such purchase was effected after the date of the December Balance Sheet, with respect to which no default exists; (ii) imperfections of title, liens and easements, if any, none of which are substantial in amount, materially detract from the value or impair the use of the property subject thereto, or impair the operations of the Company or the Subsidiaries and which have arisen only in the ordinary course of business and consistent with past practice since the date of the December Balance Sheet; and (iii) liens for current taxes not yet due. The equipment of the Company and the Subsidiaries is in good operating condition and repair and is adequate for the uses to which it is being put. At the Closing, the assets and properties of the Company and the Subsidiaries will include all of the assets and properties necessary for or currently used in the conduct of the Business.

(b) Schedule 3.19(b) of the Disclosure Schedule sets forth each interest in real property (including all land, buildings, easements and other real property rights) owned by the Company and the Subsidiaries (the "Owned Property"). The Company or its Subsidiary enjoys peaceful and quiet possession of the Owned Property. To the Company's Knowledge, the Owned Property is legally subdivided and consists of separate tax lots so that each is assessed separate and apart from any other real property. There are no material Taxes, levies, fees or similar costs or charges which must be paid with respect to existing water or sewer hook-ups relating to the Owned Property, other than amounts payable to the providers of such utilities based on use and consumption thereof.

(c) To the Company's Knowledge, none of the buildings, plant or structures on any Owned Property or leased property set forth in Schedule 3.20 of the Disclosure Schedule is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are, individually and in the aggregate, immaterial, and any repairs, maintenance and replacements required to be made by lessors of leased property. All utility systems serving such property are adequate for the business of the Company as currently conducted. There is no pending or, to the Company's Knowledge, threatened condemnation, eminent domain or similar proceeding with respect to any such property.

(d) Except as disclosed in Schedule 3.19(d) of the Disclosure Schedule, (i) each of the Accounts Receivable arose in the ordinary course of business of the Company and represents the genuine, valid and legally enforceable indebtedness of the account debtor (subject only to creditors' rights), (ii) to the Knowledge of the Company, neither the Company nor any of the Subsidiaries have received written notice that a set-off (other than discounts for prompt payment shown on the invoice) has been asserted by any of the account debtors of such Accounts Receivable, except to the extent reflected in reserves set forth in the Latest Balance Sheet in accordance with GAAP, and (iii) to the Knowledge of the Company, neither the Company nor any of the Subsidiaries has received written notice that any of the account debtors of the Accounts Receivable is involved in a bankruptcy proceeding, except to the extent reflected in reserves set forth in the Latest Balance Sheet in accordance with GAAP. The reserves set forth in the Latest Balance Sheet were determined consistent with past practices and, to the Knowledge of the Company, are adequate. The Company and the Subsidiaries have good and valid title to the Accounts Receivable free and clear of all Liens. Except as disclosed on Schedule 3.19(d) of the Disclosure Schedule, since the date of the listing of aged Accounts Receivable described below, to the Knowledge of the Company, no goods or services having a fair market value or book value of $10,000 or more, the sale or provision of which gave rise to any Accounts Receivable, have been returned or rejected by any account debtor or lost or damaged prior to receipt thereby. Set forth on Schedule 3.19(d) of the Disclosure Schedule is a listing of aged Accounts Receivable as of a date no more than seven (7) days prior to the date hereof.

(e) Schedule 3.19(e) of the Disclosure Schedule lists the location of the entire inventory, equipment and other material tangible assets of the Company and the Subsidiaries. The Company and the Subsidiaries own their respective inventory free and clear of all Liens. None of such inventory is covered by any financing statements. Except as disclosed on Schedule 3.19(e) of the Disclosure Schedule, such inventory was created or acquired for sale in the ordinary course of business of the Company or its Subsidiaries and is in good and saleable condition and is not obsolete, slow moving or damaged, except to the extent reflected in reserves set forth in the Latest Balance Sheet in accordance with GAAP. Except as disclosed on Schedule 3.19(e) of the Disclosure Schedule, all of such inventory is located at the locations of the real property of the Company and the Subsidiaries and none of such inventory is subject to any consignment, bailment, warehousing or similar arrangement.

Section 3.20 Leases. Schedule 3.20 of the Disclosure Schedule contains a list of all leases relating to real property to which the Company or any Subsidiary is a party, copies of which have been previously delivered to Purchaser. All such leases are valid, binding and enforceable against the Company or a Subsidiary, as the case may be, in accordance with their terms, and are in full force and effect; there are no existing material defaults by the Company or any Subsidiary thereunder, and, to the Company's Knowledge, no event has occurred which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default by the Company or any Subsidiary thereunder. The Company or a Subsidiary is entitled to continue to occupy such leased property under the existing leases in the event of a change of ownership or foreclosure upon the fee interest in such leased property. Such leases are subordinate to the rights of any lenders, ground lessors and other parties holding a superior interest in and to such leased premises.

Section 3.21 Related Party Transactions. No contracts or agreements are in effect between the Company or any Subsidiary, on the one hand, and officers, managers, employees or equity owners of the Company, any Subsidiary or their respective Affiliates, on the other hand.

Section 3.22 Absence of Certain Payments. None of the Company, Seller or any Subsidiary, or any of their respective officers, managers, employees or, to the Company's Knowledge, agents or other Persons acting on behalf of any of them has (i) engaged in any activity prohibited by the United States Foreign Corrupt Practices Act of 1977 or any other similar law, regulation, decree, directive or order of any Governmental Entity and (ii) without limiting the generality of the preceding clause (i), used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to government officials or others. None of the Company, Seller or any Subsidiary, or any of their respective managers, officers, employees or agents of other persons acting on behalf of any of them, has accepted or received any unlawful contributions, payments, gifts or expenditures.

Section 3.23 Brokers or Finders. No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any brokers' or finder's fee or any other commission or similar fee in connection with the origination, negotiation or execution of this Agreement or the consummation of the Transaction or any of the other transactions contemplated by this Agreement.

Section 3.24 Books and Records. The minute books and equity ownership record books of the Company contain all (i) minutes of meetings of their respective members and manager(s), (ii) written statements of actions taken by their respective members and manager(s) without a meeting, and (iii) records of the issuance, transfer, transfer and cancellation of all units of equity ownership and other securities, in each case since the date of formation of the Company, respectively. Such minute books and equity ownership record books are true and complete in all respects.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as set forth in the SEC Documents of Purchaser filed since January 1, 2007, the Purchaser represents and warrants to Seller and the Company as of the date hereof and as of the Closing Date as set forth below.

Section 4.1 Organization. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Purchaser is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such other jurisdictions where the failure to be so duly qualified or licensed and in good standing would not have a Purchaser Material Adverse Effect. For purposes of this Agreement, "Purchaser Material Adverse Effect" with respect to Purchaser means any event or occurrence that has had or could reasonably be expected to have, individually or in the aggregate, a material adverse effect (i) on the business, capitalization, assets, liabilities, properties, results of operations or condition (financial or otherwise) of Purchaser, or (ii) that would prevent or materially alter or delay the Transaction or any of the other transactions contemplated hereby, in each case other than as a result of changes or effects resulting, directly or indirectly, from (A) the public announcement of or performance of the Transaction (including any action or inaction by Purchaser's customers, suppliers, employees or competitors as a result of the public announcement or consummation of the Transaction), (B) changes in GAAP or any applicable law, (C) changes in the industry in which Purchaser operates, (D) any attack on, or by, outbreak or escalation of hostilities or acts of terrorism involving the United States, any declaration of war by Congress or any other national or international calamity, or (E) changes in general economic conditions or the financial securities markets and credit markets generally, but only to the extent any such change described in clauses (B), (C), (D), and (E) is not specifically related to Purchaser or disproportionately affects Purchaser relative to other businesses that derive substantially all of their revenue from the industry in which Purchaser is engaged.

Section 4.2 Authority Relative to this Agreement. Purchaser has full power and corporate authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Purchaser, and no other corporate proceedings on the part of Purchaser are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. Purchaser has reserved the funds necessary to complete the Transaction and will not be required to obtain the approval of any Person to satisfy its financial obligations on the Closing Date. This Agreement, when executed and delivered by Purchaser, will constitute a valid and binding agreement of Purchaser enforceable in accordance with its terms, subject to (a) law of general application relating to specific performance, injunctive relief or other equitable remedies, (b) applicable bankruptcy, insolvency, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights generally and (c) federal or state laws limiting enforceability of the indemnification provisions in Article IX of this Agreement.

Section 4.3 No Conflict; Consent.

(a) No notice to, filing with, and no permit, authorization, consent or approval of any Governmental Entity or any private third party is necessary for the consummation by Purchaser of the transactions contemplated by this Agreement, except for (a) filings required under Regulation D of the Securities Act; (b) such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state securities laws and the securities laws of any foreign country; (c) such filings and approvals as may be required in any foreign jurisdiction; and (d) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, could not be reasonably expected to have a Purchaser Material Adverse Effect.

(b) No consent, order, authorization, approval, declaration or filing is required on the part of Purchaser for or in connection with the execution, delivery or performance of this Agreement and the other agreements, documents and instruments of Purchaser contemplated hereby. Neither the execution and delivery of this Agreement by Purchaser, the consummation by Purchaser of the transactions contemplated hereby nor compliance by Purchaser with any of the provisions hereof will (i) conflict with or result in any breach of any provision of Purchaser's certificate of incorporation or bylaws, (ii) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration or result in the creation of any Lien) under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, permit, authorization, franchise, contract, agreement or other instrument or obligation to which Purchaser is a party or by which it or any of its properties or assets may be bound or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Purchaser, or its properties or assets.

Section 4.4 Litigation. There is no action, suit, proceeding, arbitration, investigation pending before any Government Entity or arbitration or mediation panel or, to Purchaser's Knowledge, threatened in which Purchaser is a party that challenges this Agreement or any of the transactions contemplated herein or could reasonably be expected to prevent, or materially alter or delay, any of the transactions contemplated by this Agreement.

Section 4.5 Investment Representations.

(a) Relationship to Company; Sophistication; Experience. Purchaser either (i) has a preexisting business or personal relationship with the Company and/or any of its officers, directors or controlling persons or (ii) the Purchaser has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective purchase of the Units and the Class A-1 Units.

(b) Restrictions on Transfer. Purchaser acknowledges that the Units and the Class A-1 Units must be held indefinitely unless subsequently registered under the Securities Act or the Company receives an opinion of counsel satisfactory to the Company that such registration is not required. Purchaser is aware of the provisions of Rule 144 promulgated under the Securities Act which permit limited resale of securities purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the securities, the availability of certain current public information about the Company, the resale occurring not less than six months after a party has purchased and paid for the securities to be sold, and, in the case of sales by affiliates of the Company, the sale being made through a "broker's transaction" or a transaction directly with a "market maker" and the number of securities being sold during any three-month period not exceeding specified limitations. Purchaser further acknowledges and understands that the Company may not be satisfying the current public information requirement of Rule 144 at the time Purchaser wishes to sell the Units and, if so, Purchaser would be precluded from selling the Units under Rule 144 even if the six-month minimum holding period has been satisfied.

(c) No Public Market. Purchaser understands that no public market now exists for the Units or the Class A-1 Units, that there can be no assurance that a public market will ever exist for the Units and that the Company is under no obligation to register the Units or the Class A-1 Units.

(d) Exemption from Registration. Purchaser further acknowledges that, in the event all of the requirements of Rule 144 are not met, compliance with another registration exemption will be required; and that, although Rule 144 is not exclusive, the staff of the SEC has expressed its opinion that persons proposing to sell private placement securities other than in a registered offering and other than pursuant to Rule 144 will have a substantial burden of proof in establishing that an exemption from registration is available for such offers or sales, that such persons and the brokers who participate in the transactions do so at their own risk, and that, therefore, there is no assurance that any exemption from registration under the Securities Act will be available or, if available, will allow such person to dispose of, or otherwise transfer, all or any portion of the Units or the Class A-1 Units.

(e) Access to Information. Purchaser has had an opportunity to discuss the Company's business, management and financial affairs with the Company's management and the opportunity to inspect Company facilities and such books and records and material contracts as Purchaser deemed necessary to its determination to purchase the Units and the Class A-1 Units; *provided, however*, that such discussions or inspections shall not limit the ability of the Purchaser to seek recovery for Damages in accordance with Article IX.

(f) Purchaser's Liquidity. Purchaser (i) has no need for liquidity in Purchaser's investment, (ii) is able to bear the substantial economic risks of an investment in the Units and the Class A-1 Units for an indefinite period and (iii) at the present time, can afford a complete loss of such investment.

(g) Offer and Sale. Purchaser understands that the transfer of the Units and the issuance of the Class A-1 Units have not been registered under the Securities Act in reliance upon an exemption therefrom. Purchaser was not offered or sold the Units or the Class A-1 Units, directly or indirectly, by means of any form of general solicitation or general advertisement, including (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio or (ii) any seminar or other meeting whose attendees had been invited by general solicitation or general advertising.

(h) Risks. Purchaser is aware that the Units and the Class A-1 Units are highly speculative and that there can be no assurance as to what return, if any, there may be. Purchaser is aware that the Company may issue additional securities in the future which could result in the dilution of Purchaser's ownership interest in the Company.

(i) Reliance. Purchaser has not relied and is not relying on any warranties, representations or other statements whatsoever, whether written or oral (from or by the Seller, the Company or any Person acting on their behalf) other than those expressly set out in this Agreement (including the Disclosure Schedule) and the other Transaction Documents.

(j) Investment Entity. Purchaser is authorized and otherwise duly qualified to purchase and hold the Units; such entity has its principal place of business as set forth in Section 11.5 hereof; and such entity has not been formed for the specific purpose of acquiring the Units.

(k) Accredited Investor. Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

ARTICLE V

COVENANTS OF THE COMPANY

The Company covenants and agrees to perform as follows:

Section 5.1 Conduct of Business Pending Transaction. Except as otherwise specifically provided in this Agreement or in Schedule 5.1 of the Disclosure Schedule, from the date of this Agreement to the earlier of the Closing or termination of this Agreement, Seller, the Company and each Subsidiary shall (i) use all reasonable efforts to conduct its operations only in the ordinary and usual course of business and consistent with past practices and (ii) preserve intact its present business organization, keep available the services of its present officers, key employees and consultants and preserve its present relationships with licensors, licensees, customers, suppliers, key employees and others having business relationships with it. Without limiting the generality of the foregoing, and except as otherwise specifically provided in this Agreement, none of Seller, the Company or any of the Subsidiaries have, and hereafter none of Seller, the Company or any Subsidiary will, directly or indirectly, prior to the Closing, without the prior written consent of Purchaser (which will not be unreasonably withheld):

(a) propose or adopt any amendment to or otherwise change the Current Operating Agreement or any of their respective organizational documents, except as necessary to carry out the transactions contemplated by this Agreement in the manner approved by Purchaser;

(b) authorize for issuance, sale, pledge, disposition or encumbrance, or issue, sell, accelerate pledge, dispose of or encumber (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase, convertible securities or otherwise), any equity interests of any class or any other securities of, or any other ownership interest in, Seller, the Company or any Subsidiary (except for the issuance of Securities specifically permitted in this Agreement) or amend any of the terms of any such securities or agreements outstanding on the date hereof;

(c) reclassify, combine, split or subdivide any units of its equity interests, declare, set aside or pay any dividend or other distribution (whether in cash, securities or property or any combination thereof) in respect of any class or series of its equity interests, other than any dividend declared prior to the date hereof;

(d) redeem, purchase or otherwise acquire, or propose or offer to redeem, purchase or otherwise acquire, any outstanding Units or other securities of the Company, other than repurchases pursuant to the terms of agreements entered into prior to the date hereof and previously provided to Purchaser prior to the date hereof;

(e) organize any new subsidiary, acquire any equity securities of any Person or acquire any equity or ownership interest (financial or otherwise) in any business;

(f) (i) incur, assume or prepay any material liability, or incur any indebtedness for borrowed money other than in accordance with the Company's current financing arrangements, (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any third party, (iii) make any loans, advances or capital contributions to, or investments in, any third party, (iv) mortgage or pledge any of its material properties or assets, tangible or intangible, or create or suffer to exist any Lien thereupon, or (v) authorize any new capital expenditures for property, plant and equipment;

(g) make any change in the compensation payable or to become payable to any of its officers, managers, employees, agents or consultants or to Persons providing management services, or enter into or amend, in any respect, any Benefit Plan or make any loans to any of its officers, managers, employees, Affiliates, agents or consultants or make any change in its existing borrowing or lending arrangements for or on behalf of any such Persons pursuant to a Benefit Plan or otherwise;

(h) license (except for non-exclusive licenses in the ordinary course of business consistent with past practice) or otherwise transfer, dispose of, abandon, permit to lapse or dedicate to the public domain any of the Company's Intellectual Property, or dispose of or disclose to any Person any trade secret, formula, process or know-how not theretofore a matter of public knowledge other than in the ordinary course of business consistent with past practice and subject to appropriate confidentiality restrictions;

(i) enter into any material contract or transaction, including but not limited to, any contract or commitment that would be disclosable under Schedule 3.15 of the Disclosure Schedule had such contract or commitment existed as of the date hereof;

(j) cancel any debts or waive, release or relinquish any contract rights or other rights of substantial value other than in the ordinary course of business, consistent with past practices;

(k) authorize, recommend, propose or enter into or announce an intention to authorize, recommend, propose or enter into a term sheet, letter of intent, agreement in principle or a definitive agreement with respect to any transaction, consolidation, liquidation, dissolution, or business combination, any acquisition of a material amount of property or assets or securities, or any disposition of a material amount of property or assets or securities;

(l) make any change with respect to accounting policies or procedures in effect as of the Company's fiscal year ended December 28, 2007;

(m) pay, discharge or satisfy any material claims, liabilities or obligations (whether asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due or otherwise) other than the payment, discharge or satisfaction of liabilities in the ordinary course of business, consistent with past practices;

(n) file any amendment to any Tax Return or make any election relating to Taxes, change any election relating to Taxes already made, adopt or change any accounting method relating to Taxes, enter into any closing agreement relating to Taxes, settle any claim or assessment relating to Taxes, consent to any claim or assessment relating to Taxes or any waiver of the statute of limitations for any such claim or assessment or surrender any right to claim a refund of Taxes;

(o) enter into any agreement to indemnify or hold harmless any Person;

(p) permit the transfer of any securities of the Company;

(q) take any action set forth in Section 3.6(a) through (p); or

(r) commit or agree (in writing or otherwise) to take any of the foregoing actions or any action, or fail to take any action, that would cause the failure of the conditions set forth in Article VII.

Section 5.2 Access; Confidentiality.

(a) The Company shall afford to the officers, employees, accountants and counsel of Purchaser full access to the Company and its Subsidiaries during normal business hours from the date hereof until the Closing or termination of this Agreement, to all its properties, books, contracts, commitments, records, employees, advisors, consultants, other personnel, customers, service providers, vendors or suppliers of, or others having material business relations with, the Company and, during such period, the Company shall furnish promptly to Purchaser all other information concerning their respective businesses, properties and personnel as Purchaser may reasonably request.

(b) All non-public information disclosed by any Party (or its representatives) whether before or after the date hereof, in connection with the transactions contemplated by, or the discussions and negotiations preceding, this Agreement to any Party (or its representatives) shall be kept confidential by such other Party and its representatives under the Non-Disclosure Agreement dated November 19, 2008, which agreement shall govern all information exchanged between the Parties through the Closing, and no such information shall be used by any such Persons other than as contemplated by this Agreement.

ARTICLE VI

OTHER COVENANTS

Section 6.1 All Reasonable Efforts.

(a) Prior to the Closing, upon the terms and subject to the conditions set forth in this Agreement, each of the Parties agrees to use all reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper or advisable (including any antitrust matters in any foreign jurisdiction) to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement, including using reasonable efforts to accomplish the following: (i) taking all reasonable acts necessary to cause the conditions precedent set forth in Article VII to be satisfied, (ii) obtaining all necessary actions or non-actions, waivers, consents, approvals, orders and authorizations from Governmental Entities (including in any foreign jurisdiction) and the making of all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Entities, if any) and taking all commercially reasonable steps as may be necessary to avoid any suit, claim, action, investigation or proceeding by any Governmental Entity, (iii) obtaining all necessary consents, approvals or waivers from third parties, (iv) defending any suits, claims, actions, investigations or proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Entity vacated or reversed and (v) execution or delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement.

(b) Without limiting the generality of the foregoing, Purchaser, Seller and the Company shall, to the extent not otherwise completed prior hereto, promptly after the date of this Agreement, prepare and file the notifications required in any foreign jurisdiction in connection with the Transaction, if any. Seller and Purchaser shall respond as promptly as practicable to any inquiries or requests received from any Governmental Entity for additional information or documentations. Seller and Purchaser shall (i) give the other Party prompt notice of the commencement of any Legal Proceeding by or before any Governmental Entity with respect to the Transaction or any of the other transactions contemplated by this Agreement,

(ii) keep the other Party informed as to the status of any such Legal Proceeding and (iii) promptly inform the other Party of any communication to or from any Governmental Entity regarding the Transaction. Seller and Purchaser will consult and cooperate with one another, and will consider in good faith the views of one another, in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any legal proceeding under or relating to any applicable foreign, federal or state antitrust or fair trade law. In addition, except as may be prohibited by any Governmental Entity or by any legal requirement, in connection with any legal proceeding under or relating to any applicable foreign, federal or state antitrust or fair trade law or any other similar legal proceeding, each of Seller and Purchaser will permit authorized representatives of the other Party to be present at each meeting or conference relating to any such legal proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Entity in connection with any such legal proceeding.

Section 6.2 Dissolution of Newco. Within sixty (60) days following the Closing, Seller shall cause Newco to be liquidated and dissolved in accordance with Delaware law. The dissolution of Newco shall have the effect of transferring all of Newco's assets, including the 45 Units of the Company held by Newco, to Seller. Seller shall take all action necessary to cause Newco to authorize and approve and to execute and deliver the New Operating Agreement at the Closing.

Section 6.3 Operation of Seller. From the Closing Date until December 31, 2013, the functions of Seller shall be to (i) hold securities of the Company, (ii) exercise its rights and comply with its obligations under this Agreement, the New Operating Agreement and the Unitholders Agreement, (iii) act as co-borrower on credit facilities in existence on the date hereof, and (iv) exercise its rights and comply with its obligations under agreements with its securityholders and under its equity-based compensation instruments (such as stock appreciation rights and stock options), and it shall conduct no business (including the incurrence of any Indebtedness) other than as is necessary to fulfill this function, except with the written consent of Purchaser or any successor entity to Purchaser. Without limiting the foregoing, Seller shall ensure that at all times from the Closing Date until December 31, 2013, holders of its equity securities constituting at least a majority (on a fully-diluted basis) of the voting power of Seller's outstanding stock shall have executed a Voting Agreement with Purchaser. Seller further agrees that, in the event its purchase right with respect to any of the shares of Seller's Common Stock becomes exercisable under the Buy-Sell Agreement, Seller shall promptly assign its purchase right to Schilling and, to the extent Seller's purchase right is not fully exercised by Schilling, Seller shall then assign its purchase right to Purchaser within the time frame permitted for Seller to exercise its purchase right under the Buy-Sell Agreement. Seller agrees to keep Purchaser reasonably informed of all developments related to the occurrence of any event that gives rise to Seller's purchase right under the Buy-Sell Agreement and all determinations made by Seller and Schilling related thereto. Seller shall not enter into any amendment or modification to the Buy-Sell Agreement without the prior written consent of Purchaser.

Section 6.4 Company Property. If, after the Closing, Seller owns or shall at any time hereafter acquire any rights in any assets, contracts or property relating to the Business, Seller shall, and hereby does, transfer all of its rights, title and interest in such assets, contracts or property to the Company for no additional consideration. Seller shall execute and deliver such additional documents and instruments and take such other actions as Purchaser shall reasonably request to give effect to the provisions of this Section 6.4.

Section 6.5 Publicity. The initial press release with respect to the execution of this Agreement shall be a joint press release acceptable to Purchaser and Seller and none of the Parties to this Agreement shall issue a press release without the prior written consent of Purchaser and Seller, except as required by Law. Thereafter, until the Closing or the date this Agreement is terminated pursuant to Article VIII hereof, neither Seller nor any of its Affiliates shall issue or cause the publication of any press release or other announcement with respect to the Transaction or this Agreement without prior approval of Purchaser.

Section 6.6 Notification of Certain Matters. Seller and the Company shall give prompt notice to Purchaser of the occurrence (or non-occurrence) of any event of which Seller and the Company has Knowledge, the occurrence (or non-occurrence) of which would be likely to cause any representation or warranty regarding Seller, the Company or any Subsidiary contained in this Agreement to be untrue or inaccurate in any material respect and of the occurrence of any material failure of Seller, the Company or any Subsidiary to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder such that any condition in Article VII would not be satisfied; and Purchaser shall give prompt notice to Seller of the occurrence (or non-occurrence) of any event of which Purchaser has Knowledge, the occurrence (or non-occurrence) of which would be likely to cause any representation or warranty of Purchaser contained in this Agreement to be untrue or inaccurate in any material respect and of the occurrence of any material failure of Purchaser to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder such that any condition in Article VII would not be satisfied; *provided*, *however*, that (x) delivery of any notice pursuant to this Section 6.6 shall not limit or otherwise affect the remedies available to either Party hereunder, (y) shall not constitute an admission by the Party delivering such notice that any such representation or warranty has been breached and (z) shall not affect or be deemed to modify any representation or warranty contained in this Agreement (or any exhibit, schedule, or certificate delivered pursuant to this Agreement) or the conditions to the Parties to consummate the transactions contemplated hereby.

Section 6.7 Transfer of Unit. Prior to the Closing Date, Schilling will purchase from Seller one-tenth of one Unit.

ARTICLE VII

CONDITIONS

Section 7.1 Conditions of Obligations of the Company and Seller. The obligations of the Company and Seller to effect the Transaction is subject to the satisfaction at or prior to the Closing Date of the following conditions, unless waived specifically in writing by Seller:

(a) The representations and warranties of Purchaser set forth in Article IV of this Agreement shall be true and correct in all material respects as of the date of this Agreement and the Closing Date (except that (i) the representations and warranties in

Sections 4.1, 4.2 and 4.3 and (ii) each other representation or warranty to the extent already qualified by materiality or a Purchaser Material Adverse Effect, shall be true and correct in all respects).

(b) Purchaser shall have performed and complied, in all material respects, with all obligations and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing Date.

(c) No litigation or proceeding shall be threatened or pending against Purchaser, Seller or the Company which enjoins, prevents or seeks to enjoin or prevent the consummation of the Transaction.

(d) Seller shall have received a certificate of good standing of Purchaser from the Secretary of State of the State of Delaware.

(e) Seller shall have received from Purchaser an officer's certificate certifying to the fulfillment of the conditions specified in Sections 7.1(a), (b) and (c) (such certification as to Section 7.1(c) being only as to litigation threatened or pending against Purchaser).

(f) Purchaser shall have executed and delivered the Unitholders Agreement in substantially the form attached hereto as Exhibit E.

(g) Purchaser shall have executed and delivered the New Operating Agreement.

(h) Purchaser and the Escrow Agent shall each have executed and delivered the Escrow Agreement.

Section 7.2 Conditions of Obligations of Purchaser. The obligation of Purchaser to effect the Transaction is subject to the satisfaction at or prior to the Closing Date of the following conditions, unless specifically waived in writing by Purchaser:

(a) The representations and warranties of Company and Seller set forth in Articles II and III of this Agreement shall be true and correct in all material respects as of the date of this Agreement and the Closing Date (except that (i) the representations and warranties contained in Sections 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.1, 3.2, 3.3 and 3.4 and (ii) each other representation or warranty to the extent already qualified by materiality or a Company Material Adverse Effect, shall be true and correct in all respects).

(b) Seller shall have performed and complied, in all material respects, with all obligations and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing Date.

(c) From the date of this Agreement through the Closing, the Company shall not have suffered a Company Material Adverse Effect, and no events, or facts which could reasonably be expected to result in a Company Material Adverse Effect shall have occurred or arisen.

(d) All terminations, consents, permits and approvals of Governmental Entities and other private third parties listed in Schedules 2.4, 3.4 and 4.4 of the Disclosure Schedule ("Required Consents") and termination statements with respect to the Liens on Units identified in Schedule 2.1 of the Disclosure Schedule shall have been obtained (with copies delivered to Purchaser) with no material adverse conditions attached and no material expense imposed on the Company, and no Required Consents shall have been withdrawn or suspended.

(e) No litigation or proceeding shall be threatened or pending against Purchaser, Seller or the Company which enjoins, presents or seeks to enjoin or prevent the consummation of the Transaction or which could reasonably be expected to result in a Company Material Adverse Effect.

(f) Purchaser shall have received certificates of good standing of the Company and Seller from the Secretary of State of the State of Delaware and all other jurisdictions in which they are required to be qualified to do business.

(g) Purchaser shall have received a legal opinion from DLA Piper dated the Closing Date in the form attached hereto as Exhibit F.

(h) Purchaser shall have received a legal opinion from Taylor Wessing LLP dated December 23, 2008 in the form attached hereto as Exhibit G.

(i) Purchaser shall have received from Seller an officer's certificate certifying to the fulfillment of the conditions specified in Sections 7.2(a), (b), (c), (d) and (e) (such certification as to Section 7.2(e) being only as to litigation threatened or pending against the Company or Seller).

(j) Seller and the Company shall have executed and delivered the Unitholders Agreement in substantially the form attached hereto as Exhibit E.

(k) Seller and Newco shall have executed and delivered the New Operating Agreement and Purchaser shall have been admitted as a Member of the Company in accordance with terms of the New Operating Agreement.

(l) Two directors designated by Purchaser shall have been appointed to the Company's Board of Directors as Class A-1 Directors (as defined in the New Operating Agreement).

(m) The holders of shares of Seller common stock listed on Schedule 7.2(m) of the Disclosure Schedule shall have delivered to Purchaser a Voting Agreement (as defined in the Unitholders Agreement).

(n) Seller, the Company and the Escrow Agent shall have executed and delivered the Escrow Agreement.

(o) Schilling shall have executed and delivered a resignation as the Manager effective as of the Closing.

ARTICLE VIII

TERMINATION AND AMENDMENT

Section 8.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of Seller and Purchaser;

(b) by either Seller or Purchaser, if

(i) any Governmental Entity shall have issued an order, decree or ruling or taken any other action (which order, decree, ruling or other action the Parties hereto shall use their reasonable efforts to lift), which permanently restrains, enjoins or otherwise prohibits the consummation of the Transaction and such order, decree, ruling or other action shall have become final and non-appealable; or

(ii) if the Transaction shall not have been consummated by December 26, 2008 (the "Termination Date") (unless the failure to consummate the Transaction by such date shall be due to the action or failure to act of the Party seeking to terminate);

(c) by Seller, if Purchaser shall have breached any of its representations, warranties or covenants contained in this Agreement which breach (i) causes or may cause any of the conditions set forth in Section 7.1 not to be satisfied and (ii) shall not have been cured within three (3) days following receipt by Purchaser of written notice of such breach from Seller;

(d) by Purchaser, if Seller shall have breached any representation, warranty or covenant contained in this Agreement which breach (i) causes or may cause any of the conditions set forth in Section 7.2 not to be satisfied and (ii) shall not have been cured within three (3) days following receipt by Seller of written notice of such breach from Purchaser;

(e) by Purchaser, if a Company Material Adverse Effect shall have occurred and shall not have been cured or remedied within three (3) days from the date Seller or the Company becomes aware of its occurrence;

(f) by Purchaser, if the conditions set forth in Section 7.2 become incapable of satisfaction prior to the Termination Date; or

(g) by the Company, if the conditions set forth in Section 7.1 become incapable of satisfaction prior to the Termination Date;

except that the Agreement may not be terminated under this Section by or on behalf of any Party that is in breach of any representation or warranty or in violation of any covenant or agreement contained herein such that the conditions set forth in Section 7.1(a) or (b) or Section 7.2(a) or (b), as the case may be, is not satisfied as of the date of termination.

Section 8.2 Effect of Termination. In the event of the termination of this Agreement by any Party hereto pursuant to the terms of this Agreement, written notice thereof shall forthwith be given to the other Party or Parties specifying the provision hereof pursuant to which such termination is made.

(a) If this Agreement is terminated (i) under Section 8.1(a) or (ii) under Sections 8.1(b), (f) or (g) herein at a time when no Party is in breach of a representation or warranty or in violation of a covenant or agreement contained herein, all further obligations of the Company to Purchaser, and of Purchaser to the Company, will terminate without further liability of any Party hereto.

(b) If this Agreement is terminated under Sections 8.1(c), (d), (e),(f) or (g) herein at a time when one or more Parties is in breach of a representation or warranty or in violation of a covenant or agreement contained in the Agreement, the liabilities and obligations of the Parties not in breach or violation of the Agreement shall terminate, and the Party or Parties which are in breach or violation of the Agreement shall remain liable for the actual costs and expenses relating to the Transaction, but excluding any consequential damages, and incurred by the Party or Parties not in breach or violation of the Agreement.

ARTICLE IX

INDEMNIFICATION

Section 9.1 Indemnification by Seller, Schilling and the Company.

(a) Subject to the limitations set forth in this Article IX, Seller and Schilling shall, jointly and severally, indemnify, hold harmless and reimburse Purchaser, the Affiliates of Purchaser and any employee, director, member, manager, officer, affiliate (other than the Company), or agent of the foregoing (the "Purchaser Indemnified Parties") for any demand, claim, payment, obligation, action or cause of action, assessment, loss, Tax, liability, damages (but excluding exemplary or punitive damages other than such damages arising in connection with or relating to patent or trademark laws or otherwise paid to any third party), reasonable cost or expense (including reasonable attorneys' fees and expenses for a single counsel representing Purchaser Indemnified Parties) or other damages (collectively, "Damages") which may be sustained or suffered by any such Purchaser Indemnified Parties arising from or relating to, directly or indirectly, or in connection with: (i) any inaccuracy in any of the warranties or representations set forth in Article II or Article III of this Agreement (including any Third Party Claim arising from or relating to this clause (a)(i)), (ii) any failure by Seller or the Company to perform or comply with any covenant or obligation in this Agreement (including any Third Party Claim arising from or relating to this clause (a)(ii)) or (iii) any Seller Taxes.

(b) Subject to the limitations set forth in this Article IX, Purchaser shall indemnify, hold harmless and reimburse the Company, Seller, the Affiliates of Seller and the Company, and any employee, director, manager, officer, affiliate, relative, spouse or agent of the foregoing (the "Seller Indemnified Parties" and together with the Purchaser Indemnified Parties, the "Indemnified Parties.") for any Damages which may be sustained or suffered by any such

Seller Indemnified Parties arising from or relating to, directly or indirectly, or in connection with: (i) any inaccuracy in any of the warranties or representations set forth in Article IV of this Agreement (including any Third Party Claim arising from or relating to this clause (b)(i)), or (ii) any failure by Purchaser to perform or comply with any covenant or obligation in this Agreement (including any Third Party Claim arising from or relating to this clause (b)(ii)).

Section 9.2 Claims Procedure.

(a) Promptly after any Indemnified Party discovers circumstances or claims that would reasonably be expected to lead to Damages or any Damages actually incurred, including any Third Party Claims that might give rise to indemnification hereunder, such Indemnified Party shall promptly deliver to the Party alleged to be liable for indemnification hereunder (an "Indemnitor"), with a copy to each of the Company, Seller, Schilling and Purchaser, a certificate signed by the Indemnified Party (a "Claim Certificate") that such Damages exist or are reasonably expected to occur and specifying in reasonable detail the individual items of such Damages included in the amount so stated, the date each such item was paid, or properly accrued or arose, and the nature of the misrepresentation or breach to which such item is related; *provided*, *however*, that an Indemnified Party's failure to send or delay in sending a Claim Certificate shall not relieve an Indemnitor from liability hereunder with respect to such Claim Certificate except to the extent and only to the extent the Indemnitor is materially prejudiced by such failure or delay (in each case, subject to any applicable time limitation on the delivery of a Claim Certificate in Section 9.5).

(b) The Indemnitor shall have fifteen (15) days after delivery of a Claim Certificate to object to any claim or claims made in such Claim Certificate in a written statement delivered to the Indemnified Party. In case the Indemnitor shall so object in writing to any claim or claims made by the Indemnified Party in the Claim Certificate, the Indemnified Party shall have fifteen (15) days to respond in a written statement to the objection of the Indemnitor. If after such second fifteen (15) day period there remains a dispute as to any claims, the Parties shall attempt in good faith for sixty (60) days to agree upon the rights of the respective Parties with respect to each of such claims. If the Parties should so agree, a memorandum setting forth such agreement shall be prepared and signed by the Indemnitor and the Indemnified Party.

(c) Claims for Damages specified in any Claim Certificate to which an Indemnitor shall not object in writing within fifteen (15) days of receipt thereof, claims for Damages covered by a memorandum of agreement of the nature described in Section 9.2(b), claims for Damages the validity and amount of which have been the subject of final determination as described in Section 9.3 and claims for Damages the validity and amount of which shall have been the subject of a final judicial determination (or shall have been settled with the consent of the Indemnifying Party) as described in Section 9.3 are hereinafter referred to as "Agreed Claims".

(d) Subject to Section 9.7 and except for Agreed Claims to be settled from the Escrow Fund as described in Section 9.9, within ten (10) Business Days after the determination of the amount of any Agreed Claims, the Indemnitor shall pay to the Indemnified Party an amount equal to the Agreed Claim by wire transfer of immediately available funds to the bank account or accounts designated in writing by the Indemnified Party not less than three (3) Business Days prior to such payment.

Section 9.3 Resolution of Conflicts and Arbitration.

(a) If no agreement can be reached with respect to any claim for Damages under this Article IX after good faith negotiation by the Parties pursuant to Section 9.2(b), any Party may, by written notice to the other Parties, demand arbitration of the matter unless the amount of the Damages is at issue in pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or the Parties agree to arbitration; such arbitration shall be administered by the Center for Public Resources Institute for Conflict Prevention and Resolution (the "CPR") in accordance with its then prevailing Rules for Non-Administered Arbitration of Business Disputes, by an arbitrator or arbitrators as selected and described in Section 9.3(b). The arbitrator(s) shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrator(s), to discover relevant information from the opposing Parties about the subject matter of the dispute. The arbitrator(s) shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including, without limitation, attorneys' fees and costs, to the same extent as a court of competent jurisdiction, should the arbitrator(s) determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator(s) shall be written, shall be in accordance with applicable law, including, without limitation, the United States Arbitration Act, 9 U.S.C. § 1 *et seq*. (the "USAA"), and with this Agreement, and shall be supported by written findings of fact and conclusions of law which shall set forth the basis for such decision. The decision of the arbitrator(s) as to the validity and amount of any claim in any Claim Certificate shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction, and the Parties shall be entitled to act in accordance with such decision.

(b) For all disputes for which the aggregate disputed dollar amount is equal to or less than $3,000,000, the Parties shall agree upon a single arbitrator to oversee such dispute. If the Parties cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the dispute shall be managed by a single independent arbitrator to be chosen by the CPR. For all disputes for which the aggregate disputed dollar amount exceeds $3,000,000, such dispute shall be managed and ruled upon by a panel of three arbitrators. Purchaser and Seller shall each name one of the arbitrators, and the third arbitrator shall be chosen by Purchaser and Seller or, if Purchaser and Seller cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the third arbitrator shall be an independent arbitrator selected by the CPR.

(c) Any arbitration under this Article IX shall be governed by the USAA and shall be held in Wilmington, Delaware. The non-prevailing Party to an arbitration shall pay its own expenses, the fees of the arbitrator, any fees and expenses of the CPR, and the expenses, including attorneys' fees and costs, reasonably incurred by the other Party to the arbitration.

Section 9.4 Third Party Claims. Promptly after receipt by an Indemnified Party of notice of the commencement of any action or demand or claim by a third party (a "Third Party Claim") which may give rise to Damages, the Indemnitor may assume and diligently pursue the defense thereof with counsel reasonably satisfactory to such Indemnified Party and the Indemnified Party shall cooperate in all reasonable respects in such defense. The Indemnified Party shall have the right to employ separate counsel in any action or claim and to participate in the defense thereof; *provided, however*, that the fees and expenses of counsel employed by the Indemnified Party shall be at the expense of the Indemnitor only if such counsel is retained pursuant to the following sentence or if the employment of such counsel has been specifically authorized by the Indemnitor, and *provided, further*, that in the event there are multiple Indemnified Parties in any matter the Indemnitor shall be obligated to pay the fees and expenses of only one counsel unless an Indemnified Party has been advised in writing by counsel that there may be one or more legal defenses available to the Indemnified Party which are not available to the other Indemnified Parties. If the Indemnitor does not notify the Indemnified Party within fifteen (15) days after receipt of the Claim Certificate (or such shorter period of time if the Indemnified Party is required to take action by applicable law) that the Indemnitor elects to undertake the defense thereof, the Indemnified Party or if the named parties to any such action (including any impleaded parties) include both such Indemnified Party and the Indemnitor and such Indemnified Party shall have been advised in writing by such counsel that there may be one or more legal defenses available to the Indemnified Party which are not available to the Indemnitor, or available to the Indemnitor, but the assertion of which would be adverse to the interests of the Indemnitor, shall have the right to defend at the expense of the Indemnitor the claim with counsel of its choosing. Prior to any settlement, the Indemnified Party shall send a written notice to the Indemnitor of any proposed settlement of any claim, which settlement the Indemnitor may reject, in its reasonable judgment within fifteen (15) days of receipt of such notice. Failure to reject such notice within such fifteen (15)-day period shall be deemed an acceptance of such notice. Whether the Indemnified Party, on the one hand, or the Indemnitor, on the other hand, shall have undertaken the defense of a Third Party Claim, such Person that has undertaken the defense of a Third Party Claim shall not admit any liability with respect to, consent to the entry of any judgment, or settle, compromise or discharge, any Third Party Claim without the prior written consent of the Indemnitor or the Indemnified Party, respectively (which consent in either case shall not be unreasonably withheld, delayed or conditioned). So long as the Indemnitor is conducting the defense of any Third Party Claim in accordance with the terms hereof, the Indemnified Party agrees that Indemnitor shall have full and complete control over the conduct of such proceeding.

Section 9.5 Indemnity Period. No claim for indemnification under Section 9.1(a)(i) or Section 9.1(b)(i) of this Agreement may be made unless a Claim Certificate is given by the Party seeking such indemnification to the Party from whom indemnification is sought on or prior to thirty (30) days after completion of the independent audit of the Company's financial statements for the fiscal year ending December 31, 2009; *provided, however*, that the indemnity period for claims for indemnification from and against Damages arising, directly or indirectly, from or in connection with: (i) any inaccuracy in any of the warranties or representations contained in Sections 2.1 (Title), 2.2 (Organization and Authority), 2.3 (Capitalization), 2.4 (No Conflict; Consent), 2.5 (Validity and Enforceability), 2.6 (No Other Activities), 3.1 (Organization), 3.2 (Capitalization), 3.3 (Authorization), 3.4 (No Conflict; Consent), 4.1 (Organization), 4.2 (Authority Relative to this Agreement) and 4.3 (No Conflict; Consent) will survive indefinitely and (ii) any inaccuracy in any of the warranties or representations contained in Sections 2.7 (Taxes), 3.11 (Taxes), 3.12 (Employee Benefits), 3.17 (Environmental Matters) or any fraud or intentional misrepresentation shall survive until thirty (30) days after the applicable statute of limitations and (iii) Seller Taxes shall survive until thirty (30) days after the applicable statute of limitations.

Section 9.6 Indemnification Basket.

(a) The provisions for indemnity contained in Section 9.1(a)(i) shall become effective only in the event that the aggregate amount of all Agreed Claims for which Seller, and Schilling are liable under this Article IX exceeds in the aggregate $500,000 (the "Indemnification Basket"), and then only for the amount by which such Agreed Claims exceed the Indemnification Basket; *provided, however*, that once Agreed Claims with respect to indemnification from and against Damages arising, directly or indirectly, from or in connection with any inaccuracy in any of the warranties or representations of Seller contained in Section 2.7 (Taxes) or any inaccuracy in any of the warranties or representations of the Company in Section 3.11 (Taxes) or Section 9.1(a)(iii) exceed the Indemnification Basket, Purchaser shall be entitled to indemnification for such Agreed Claims for the aggregate amount of all such Agreed Claims, regardless of the Indemnification Basket, and *provided, further*, that the Indemnification Basket shall not apply to any claim for indemnification from and against Damages arising, directly or indirectly, from or in connection with: (i) any inaccuracy in any of the warranties or representations of Seller contained in Sections 2.1 (Title), 2.2 (Organization and Authority), 2.3 (Capitalization), 2.4 (No Conflict; Consent), 2.5 (Validity and Enforceability), 2.6 (No Other Activities), (ii) any inaccuracy in any of the warranties or representations of the Company in Sections 3.1 (Organization), 3.2 (Capitalization), 3.3 (Authorization) or 3.4 (No Conflict; Consent), or (iii) any fraud or intentional misrepresentation by the Indemnitor.

(b) The provisions for indemnity contained in Section 9.1(b)(i) shall become effective only in the event that the aggregate amount of all indemnifiable damages for which Purchaser is liable under this Article IX exceeds the Indemnification Basket, and then only for the amount by which such indemnifiable damages exceed the Indemnification Basket; *provided, however*, that the Indemnification Basket shall not apply to any claim for indemnification from and against Damages arising, directly or indirectly, from or in connection with (i) any inaccuracy in any of the warranties or representations of Purchaser contained in Sections 4.1 (Organization), 4.2 (Authority Relative to this Agreement)or 4.3 (No Conflict; Consent) or (ii) any fraud or intentional misrepresentation by the Purchaser.

Section 9.7 Limitations on Indemnity. The Indemnified Parties entitlement to recover any Damages pursuant to Sections 9.1(a) and (b) shall be limited by the provisions of this Section 9.7 as follows:

Following the Closing Date, except as otherwise provided below, the sole recourse of the Purchaser Indemnified Parties shall be the Escrow Fund and recovery from the Escrow Amount shall be the sole and exclusive remedy of the Purchaser Indemnified Parties. With respect to any Agreed Claims for indemnification from and against Damages arising, directly or indirectly, from or in connection with (i) any inaccuracy in any of the warranties or representations of Seller or the Company contained in Article II and in Sections 3.1 (Organization), 3.2 (Capitalization), 3.3 (Authorization), 3.4 (No Conflict; Consent) and 3.11 (Taxes), (ii) any claims pursuant to Section 9.1(a)(iii) or (iii) any fraud or intentional misrepresentation by Seller or the Company (collectively, the "Excluded Claims"), the maximum aggregate amount payable with respect to such Agreed Claims shall be the Purchased Unit Purchase Price; and, *provided however*, that any Agreed Claims with respect to any Excluded Claims may be satisfied from the Escrow Fund or from Seller and Schilling at the election of Purchaser. With respect to any Agreed Claims for indemnification from and against Damages arising, directly or indirectly, from or in connection with any inaccuracy in any of the warranties or representations of Seller or the Company contained in Sections 3.12 (Employee Benefits) or 3.17 (Environmental Matters), the maximum aggregate amount payable with respect to such Agreed Claims, together with all other Agreed Claims (other than the Excluded Claims), shall be $10,000,000; and provided further that any Agreed Claims arising, directly or indirectly, from or in connection with any inaccuracy in any of the warranties or representations of Seller or the Company contained in Sections 3.12 (Employee Benefits) or 3.17 (Environmental Matters) shall first be satisfied from the Escrow Fund (to the extent then available) and then by Seller and Schilling, jointly and severally.

(a) Following the Closing Date, with respect to any Agreed Claims for indemnification from and against Damages arising, directly or indirectly, from or in connection with (i) any inaccuracy in any of the warranties or representations of Purchaser contained in Article IV and (ii) and any fraud or intentional misrepresentation by Purchaser, the maximum aggregate amount payable with respect to such Agreed Claims shall be the Purchased Unit Purchase Price.

Section 9.8 Contribution. To the extent amounts related to Agreed Claims are paid by Schilling or Seller, Schilling or Seller, as the case may be, shall not be entitled to recover such amounts by contribution from the Company. The Parties acknowledge and agree that Schilling shall be prohibited from seeking indemnification from the Company under the New Operating Agreement or any indemnification agreement between Schilling and the Company as a result of the payment by Schilling of any Agreed Claims under this ARTICLE IX.

Section 9.9 Claims Against the Escrow Amount.

(a) With respect to any Agreed Claims (i) that are required to be settled from the Escrow Fund pursuant to Section 9.7 or (ii) which Purchaser elects to be settled from the Escrow Fund to the extent permitted in Section 9.7, Purchaser shall, after determination of the amount of any such Agreed Claim promptly give notice in accordance with Section 11.5 to Seller requesting that Seller execute with appropriate notarization and deliver to Purchaser a joint instruction letter to be delivered to the Escrow Agent (which letter shall be attached to such notice and shall be in a form that complies with the Escrow Agreement) (a "Joint Instruction Letter") instructing the Escrow Agent to pay to Purchaser the amount of such Agreed Claim from the Escrow Fund in accordance with the terms of the Escrow Agreement.

(b) If Purchaser has not delivered a Claim Certificate in accordance with Section 9.2 prior to the General Expiration Date (or if all Claim Certificates delivered under Section 9.2 prior to the General Expiration Date have been satisfied by payment to Purchaser or a final determination has been made that no amounts are owing by Seller or Schilling), then Seller shall give Purchaser a notice requesting that Purchaser execute with appropriate notarization and deliver to Seller a Joint Instruction Letter instructing the Escrow Agent to pay to Seller an amount equal to all remaining funds in the Escrow Fund (net of amounts to be paid to the Escrow Agent in connection with the termination of the Escrow Agreement) (such payment, in the aggregate, the "Seller Escrow Distribution"). Within 5 days of the receipt of such notice, Purchaser shall execute and deliver to Seller such Joint Instruction Letter for delivery to the Escrow Agent. Seller shall be responsible for delivering such Joint Instruction Letter to the Escrow Agent. If Purchaser shall fail to timely deliver such executed Joint Instruction Letter, Seller shall be entitled to seek an arbitration or court order (in accordance with Section 9.3) that will enable the Escrow Agent to distribute to Seller the funds to which it is entitled and to seek Damages from Purchaser as a result of its failure to comply herewith. If Purchaser has delivered one or more Claim Certificates prior to the General Expiration Date which have not been satisfied and if the aggregate amount claimed by Purchaser pursuant to such Claim Certificates equals or exceeds the Seller Escrow Distribution, then Seller shall not be entitled to any distribution pursuant to this Section 9.9(a). If Purchaser has delivered one or more Claim Certificates prior to the General Expiration Date which have not been satisfied and if the aggregate amount claimed by Purchaser pursuant to such Claim Certificates is less than the Seller Escrow Distribution, then Seller shall be entitled to request a distribution to Seller in the manner provided above but in an aggregate amount equal to the Seller Escrow Distribution less the aggregate amount claimed by Purchaser pursuant to such Claim Certificates. In addition, at such time after the General Expiration Date as all remaining Claim Certificates have been satisfied, Seller shall be entitled to request a distribution to Seller in the manner provided above with respect to the remaining Escrow Amount, if any, net of amounts to be paid to the Escrow Agent in connection with the termination of the Escrow Agreement.

Section 9.10 Exclusive Remedy. After the Closing, absent fraud or intentional misrepresentation, the provisions of this Article IX shall be the sole and exclusive remedy of the Parties for any Damages incurred by any Indemnified Party.

ARTICLE X

DEFINITIONS AND INTERPRETATION

Section 10.1 Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise:

"2008 Financial Statements" shall have the meaning set forth in Section 1.8(a) hereof.

"A-1 Unit Purchase Price" shall have the meaning set forth in Section 1.1 hereof.

"Accounts Receivable" means all accounts and notes receivable from account, note and other debtors of the Company and the Subsidiaries outstanding as of the date hereof.

"Actual 2008 EBITDA" means the consolidated net income from continuing operations of Seller, the Company and the Subsidiaries for the fiscal year ended December 26, 2008, as set forth in the 2008 Financial Statements, prior to the effect of income taxes, interest expense, interest income, depreciation, amortization, gains or losses on disposal of assets or other extraordinary or non-recurring items, in each case to the extent such items were deducted for purposes of calculating net income in the 2008 Financial Statements and as adjusted to give effect to the items described in Exhibit D, to the extent applicable.

"Actual Net Equity Value" shall have the meaning set forth in Section 1.8(a).

"Actual Purchased Interest Value" means the product of (a) 0.45 and (b) Actual Net Equity Value.

"Affiliate" shall have the meaning set forth in Rule 12b-2 of the Exchange Act.

"Agreed Claims" shall have the meaning set forth in Section 9.2(c) hereof.

"Agreement" or "this Agreement" shall mean this Purchase Agreement, together with the Exhibits and Schedules hereto.

"Audit" or "Audits" shall mean any audit, assessment, or other examination relating to Taxes by any Tax Authority or any judicial or administrative proceedings relating to Taxes.

"Benefit Plans" shall have the meaning set forth in Section 3.12(a) hereof.

"Business" shall mean the business of the Company and its Subsidiaries, taken as a whole, as conducted and currently contemplated to be conducted.

"Business Day" shall mean any day other than a Saturday, a Sunday or a holiday on which banks in the State of California are closed for business.

"Buy-Sell Agreement" shall mean that certain Buy-Sell Agreement dated December 28, 2007 by and among Seller and the stockholders who are a party thereto, as such agreement may be amended from time to time.

"Claim Certificate" shall have the meaning set forth in Section 9.2(a) hereof.

"Class A-1 Units" shall have the meaning set forth in Section 1.1 hereof.

"Closing" shall mean the closing referred to in Section 1.2 hereof.

"Closing Date" shall have the meaning set forth in Section 1.2 hereof.

"Code" shall mean the United States Internal Revenue Code of 1986, as amended.

"Company" shall have the meaning set forth in the preamble hereto.

"Company Adjustment Payment" shall have the meaning set forth in Section 1.8(c) hereof.

"Company Material Adverse Effect" shall have the meaning set forth in Section 3.1(a) hereof.

"CPR" shall have the meaning set forth in Section 9.3(a).

"Current Operating Agreement" shall have the meaning set forth in Section 1.5 hereof.

"Damages" shall have the meaning set forth in Section 9.1 hereof.

"December Balance Sheet" shall have the meaning set forth in Section 3.5(a) hereof.

"Disclosure Schedule" shall have the meaning set forth in Article II hereof.

"DLA Piper" shall have the meaning set forth in Section 1.2 hereof.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any Person or entity alleging or seeking to establish a basis for liability (including, without limitation, potential liability for investigatory costs, cleanup costs, corrective measures, governmental response costs, natural resources damages, property damages, personal injuries, or penalties) arising out of, based on or resulting from (a) the presence, or release into the environment, of any Material of Environmental Concern at any location, whether or not owned or operated by the Company or any Subsidiary or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

"Environmental Laws" means all applicable federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or remediation of environmental contamination, including, without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of, or the exposure of any Person or property to, Materials of Environmental Concern.

"Escrow Agent" shall have the meaning set forth in Section 1.7 hereof.

"Escrow Agreement" shall have the meaning set forth in Section 1.7 hereof.

"Escrow Amount" shall have the meaning set forth in Section 1.7 hereof.

"Escrow Fund" shall have the meaning set forth in the Escrow Agreement.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall have the meaning set forth in Section 3.12(a) hereof.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Financial Statements" shall have the meaning set forth in Section 3.5(a) hereof.

"General Expiration Date" shall mean the thirtieth day after the completion of the independent audit of the Company's financial statements by Ernst & Young LLP for the fiscal year ending December 31, 2009.

"Governmental Entity" shall have the meaning set forth in Section 2.4(a) hereof.

"Holdback Amount" means $10,000,000.

"Indebtedness" shall have the meaning set forth in Section 2.3(d) hereof.

"Indemnified Parties" shall have the meaning set forth in Section 9.1(b) hereof.

"Indemnification Basket" shall have the meaning set forth in Section 9.6(a) hereof.

"Indemnitor" shall have the meaning set forth in Section 9.2(a) hereof.

"Intellectual Property" shall have the meaning set forth in Section 3.14(a) hereof.

"IRS" shall have the meaning set forth in Section 3.12(a) hereof.

"Joint Instruction Letter" shall have the meaning set forth in Section 9.9(a).

"Knowledge" with respect to the Company shall mean the knowledge of Tyler Schilling and each officer of Seller, the Company or any Subsidiary with a title of Vice President or above after due inquiry and with respect to Purchaser shall mean the knowledge of each officer of Purchaser, with a title of Vice President or above after due inquiry.

"Latest Balance Sheet" shall have the meaning set forth in Section 3.5(a) hereof.

"License Agreements" shall have the meaning set forth in Section 3.14(b) hereof.

"Lien" shall have the meaning set forth in Section 2.4(b) hereof.

"Manager" shall have the meaning set forth in Section 3.1(d) hereof.

"Material Contracts" shall have the meaning set forth in Section 3.15 hereof.

"Materials of Environmental Concern" shall mean chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, hazardous materials, petroleum and petroleum products, asbestos, asbestos containing materials, polychlorinated biphenyls, mold or microbial matters and any other substance that is currently regulated by an Environmental Law.

"Member" shall mean any Person who has been admitted to the Company as a Member in accordance with the Current Operating Agreement or is an assignee of a Member who has become a Member in accordance with the Current Operating Agreement.

"Net Debt" means, as to Seller, the Company and the Subsidiaries, the current and long-term consolidated indebtedness (including, without limitation, any obligations for borrowed money or for the deferred purchase price of property or services and any obligations under financing or capital leases or letters of credit), net of cash and cash equivalents (after giving effect to the payment of the Total Purchase Price) as set forth in the 2008 Financial Statements. For purposes of calculating Net Debt, the Parties shall give effect to an assumed receipt of $116,000,000 in cash by the Company as of the balance sheet date in connection with the Closing and shall not give effect to the discharge of any current or long-term indebtedness as of the balance sheet date using actual transaction proceeds received by the Company on the Closing Date. The calculation of Net Debt shall be further adjusted as provided in Exhibit D. The Parties agree that, for purposes of this Agreement, Net Debt may be a negative number in the event that cash and cash equivalents is greater than current and long-term indebtedness, calculated on a consolidated basis.

"New Operating Agreement" shall have the meaning set forth in Section 1.5 hereof.

"Newco" shall mean Schilling Robotics Newco, LLC, a Delaware limited liability company and wholly-owned subsidiary of Seller.

"Open Source Materials" shall have the meaning set forth in Section 3.14(n) hereof.

"Out-Licensed Software" shall have the meaning set forth in Section 3.14(k) hereof.

"Owned Property" shall have the meaning set forth in Section 3.19(a) hereof.

"Party" and "Parties" shall have the meanings set forth in the preamble hereto.

"Patents" shall have the meaning set forth in Section 3.14(a) hereof.

"Person" shall mean a natural person, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity or other entity or organization.

"Proposed Calculations" shall have the meaning set forth in Section 1.8(b) hereof.

"Purchased Unit Purchase Price" shall have the meaning set forth in Section 1.1 hereof.

"Purchased Units" shall have the meaning set forth in Section 1.1 hereof.

"Purchaser" shall have the meaning set forth in the preamble hereto.

"Purchaser Indemnified Party" shall have the meaning set forth in Section 9.1(a) hereof.

"Purchaser Material Adverse Effect" shall have the meaning set forth in Section 4.1 hereof.

"Required Consents" shall have the meaning set forth in Section 7.2(d) hereof.

"Schilling" shall have the meaning set forth in the preamble hereto.

"Schilling Transaction Expenses Estimate" shall mean the good faith estimate of the transaction expenses incurred by Seller and the Company and described in reasonable detail on a schedule provided to Purchaser one Business Day prior to the Closing.

"SEC" means the U.S. Securities and Exchange Commission.

"SEC Documents" means those documents filed with the SEC pursuant to the Securities Act or the Exchange Act.

"Securities" shall mean any options, warrants, units or any other securities or rights to acquire securities.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Seller" shall have the meaning set forth in the preamble hereto.

"Seller Escrow Distribution" shall have the meaning set forth in Section 9.9(a) hereof.

"Seller Indemnified Parties" shall have the meaning set forth in Section 9.1(b) hereof.

"Seller Taxes" shall mean any liability for Taxes of the Company, the Seller, Schilling or a shareholder of the Seller with respect to Taxes attributable to periods (or portions of periods) ending on or before the Closing Date. For the avoidance of doubt, Seller Taxes includes (i) any Taxes arising from the Transaction, and (ii) any obligation of the Company or Seller to pay or distribute any amounts that relate to the Seller Tax liability of another person, such as Schilling or shareholder of the Seller.

"Seller's Common Stock" shall have the meaning set forth in Section 2.3(a) hereof.

"Software" shall have the meaning set forth in Section 3.14(k) hereof.

"Source Code" shall have the meaning set forth in Section 3.14(k) hereof.

"Subsidiary" shall have the meaning set forth in Section 3.1(b).

"Tax" or "Taxes" means any taxes, assessments, fees, unclaimed property and escheat obligations and other governmental charges imposed by any Governmental Entity, including income, profits, gross receipts, gains, net proceeds, net worth, alternative or add on minimum, ad valorem, value added, turnover, sales, use, property, personal property (tangible and intangible), environmental, stamp, leasing, lease, user, excise, duty, franchise, capital stock, transfer, registration, license, withholding, social security (or similar), unemployment, workers compensation, disability, payroll, employment, social contributions, fuel, excess profits, occupancy, occupational, premium, windfall profit, severance, estimated, or other charge of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Authority" means the Internal Revenue Service and any other domestic or foreign governmental authority responsible for the collection and administration of any Taxes.

"Tax Returns" mean all federal, state, local, and foreign tax returns, declarations, statements, claims for refunds, reports, schedules, forms, and information returns and any amendments thereto.

"Termination Date" shall have the meaning specified in Section 8.1(b)(ii) hereof.

"Third Party Claim" shall have the meaning set forth in Section 9.4 hereof.

"Total Purchase Price" shall have the meaning set forth in Section 1.1 hereof.

"Trade Secrets" shall have the meaning set forth in Section 3.14(a) hereof.

"Trademarks" shall have the meaning set forth in Section 3.14(a) hereof.

"Transaction" shall have the meaning set forth in Section 1.1 hereof.

"Transaction Documents" means this Agreement, the New Operating Agreement, the Unitholders Agreement, the Escrow Agreement and all agreements, conveyances, documents, instruments and certificates delivered at the Closing pursuant to this Agreement.

"Transaction Expenses" shall have the meaning set forth in Section 11.2 hereof.

"Unitholders Agreement" shall have the meaning set forth in the Recitals hereof.

"Units" shall have the meaning set forth in the Recitals hereof.

"USAA" shall have the meaning set forth in Section 9.3(a).

"Voting Debt" shall have the meaning set forth in Section 2.3(b) hereof.

"WARN Act" shall have the meaning set forth in Section 3.16(c) hereof.

Section 10.2 Interpretation.

(a) When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(b) Whenever the words "include", "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

(c) The words “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(d) The plural of any defined term shall have a meaning correlative to such defined term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.

(f) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(g) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

ARTICLE XI

MISCELLANEOUS

Section 11.1 Survival. Except as otherwise specifically provided in Article IX of this Agreement, the representations, warranties, covenants and agreements made by the Company herein shall survive any investigation made by Purchaser and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of Company pursuant to this Agreement shall be deemed to be representations and warranties by Company hereunder.

Section 11.2 Fees and Expenses. Except as specifically provided to the contrary in this Agreement, all fees, costs and expenses (including but not limited to, all brokers’ fees, data room costs and the fees, costs and expenses of legal counsel, financial advisors and accountants and all fees and expenses incurred in connection with the antitrust matters in foreign jurisdictions), incurred or accelerated in connection with this Agreement and the consummation of the Transaction or any of the other transactions contemplated hereby (the “Transaction Expenses”) shall be paid by the Party incurring such expenses; *provided*, *however*, that FMC shall be solely responsible for all costs and expenses incurred in connection with the antitrust matters in foreign jurisdictions.

Section 11.3 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of Purchaser and Seller.

Section 11.4 Extension; Waiver. At any time prior to the Closing, the Parties hereto may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such Party. No failure to exercise or delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, powers or remedy. The rights provided hereunder are cumulative and not exclusive of any rights, power or remedies provided by law.

Section 11.5 Notices. All notices and other communications hereunder shall be in writing (and shall be deemed given upon receipt) if delivered personally, sent by facsimile transmission (receipt of which is confirmed) or by mail to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

(a) if to Seller, to

SCHILLING ROBOTICS, INC.
201 Cousteau Place
Davis, CA 95618
Attention: Philip F. Otto
Facsimile No.: (530) 753-8092

with a copy to

DLA PIPER LLP (US)
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
Attention: Gilles S. Attia
Facsimile No.: (916) 930-3201

(b) if to the Company, to

SCHILLING ROBOTICS, LLC
201 Cousteau Place
Davis, CA 95616
Attention: Tyler Schilling, Chairman
Facsimile No.: (530) 753-8092

with a copy to

DLA PIPER LLP (US)
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
Attention: Gilles S. Attia
Facsimile No.: (916) 930-3201

(c) if to Schilling, to

Tyler Schilling
c/o SCHILLING ROBOTICS, INC.
201 Cousteau Place
Davis, CA 95616
Facsimile No.: (530) 753-8092

(d) if to Purchaser, to

FMC TECHNOLOGIES, INC.
1803 Gears Road
Houston, TX 77067
Attention: General Counsel
Facsimile No.: (281) 591-4102

with a copy to

Vinson & Elkins L.L.P.
1001 Fannin Street, Suite 2500
Houston, TX 77002
Attention: T. Mark Kelly
Facsimile No.: (713) 615-5531

Section 11.6 Descriptive Headings. The descriptive headings herein are inserted for convenience only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Section 11.7 Counterparts. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 11.8 Entire Agreement. This Agreement (including the Exhibits and Schedules attached hereto) constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof.

Section 11.9 Assignment. This Agreement shall not be assigned by operation of law or otherwise except that Purchaser may assign, in its sole discretion, (i) its indemnification and other rights hereunder to any bank or other financial institution which is or becomes a lender to Purchaser or the Company or any of their respective successors and assigns, (ii) any or all of its rights, interests and obligations to any Person acquiring a material portion of the assets, business or securities of the Company or Purchaser, whether by merger, consolidation, sale of assets or otherwise, or (iii) any or all of its rights, interests and obligations hereunder to any direct or indirect wholly or majority owned subsidiary or Affiliate of Purchaser; *provided*, *however*, that such assignment pursuant to this clause (iii) shall not relieve Purchaser of its obligations hereunder.

Section 11.10 Governing Law; Forum. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without regard to any applicable principles of conflicts of law. Any judicial proceeding arising out of or relating to this Agreement shall be brought in the courts of the State of Delaware, and, by execution and delivery of this Agreement, each of the Parties to this Agreement accepts the exclusive jurisdiction of such courts, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. Each of the Parties further agrees that a summons and complaint commencing an action or proceeding in any of such courts shall be properly served and shall confer personal jurisdiction if served to it at the address and in the manner set forth in Section 11.5 or as otherwise provided under the laws of the State of Delaware. This provision may be filed with any court as written evidence of the knowing and voluntary irrevocable agreement between the Parties to waive any objections to jurisdiction, to venue or to convenience of forum. The foregoing consents to jurisdiction and appointments of agents to receive service of process shall not constitute general consents to service of process in the State of Delaware for any purpose except as provided above and shall not be deemed to confer rights on any Person other than the respective Parties to this Agreement.

Section 11.11 Specific Performance. The Parties hereto agree that if any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

Section 11.12 Parties in Interest. Except as set forth in Section 9.1 hereof, this Agreement shall be binding upon and inure solely to the benefit of each Party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person or Persons any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 11.13 Severability. This Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited or invalid under any such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating or nullifying the remainder of such provision or any other provisions of this Agreement. If any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provisions shall be construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by applicable law.

Section 11.14 Waiver of Jury Trial. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the date first written above.

SCHILLING ROBOTICS, INC.

By: Philip F. Otto
Its: Chief Executive Officer

SCHILLING ROBOTICS, LLC

By: Tyler Schilling
Its: Manager

FMC TECHNOLOGIES, INC.
Principal Place of Business:

By: Jeffrey W. Carr
Its: Vice President, General Counsel & Secretary

With respect to Articles II, III and IX only:

Tyler Schilling

[SECURITIES PURCHASE AGREEMENT–SIGNATURE PAGE]

Exhibit A

Form of New Operating Agreement

Exhibit B

Escrow Agreement

Exhibit C

Purchase Price Adjustment Schedule – Sample Calculations

The following examples are for illustrative purposes only.

Scenario 1: Company Adjustment Payment exceeds the Holdback Amount

Assumptions:

- Actual 2008 EBITDA = $27,000,000
- Actual Net Debt = $1,000,000

Calculation of Actual Net Equity Value

($27,000,000 times 8.52) minus $1,000,000 = $229,040,000

(Actual 2008 EBITDA times 8.52) minus (Actual Net Debt) = Actual Net Equity Value

Calculation of Actual Purchased Interest Value

$229,040,000 times 0.45 = $103,068,000

(Actual Net Equity Value times 0.45) = Actual Purchased Interest Value

Calculation of Company Adjustment Payment

$116,000,000 minus $103,068,000 = $12,932,000

($116,000,000 minus Actual Purchased Interest Value) = Company Adjustment Payment

Calculation of Amount Payable to Purchaser Pursuant to Section 1.7(c)

$12,932,000 minus $10,000,000 = $2,932,000

(Company Adjustment Payment minus Holdback Amount)

Scenario 2: Holdback Amount exceeds Company Adjustment Payment

Assumptions:

- Actual 2008 EBITDA = $28,500,000
- Actual Net Debt = $1,000,000

Calculation of Actual Net Equity Value
($28,500,000 times 8.52) minus $1,000,000 = $241,820,000

(Actual 2008 EBITDA times 8.52) minus (Actual Net Debt) = Actual Net Equity Value

Calculation of Actual Purchased Interest Value
$241,820,000 times 0.45 = $108,819,000

(Actual Net Equity Value times 0.45) = Actual Purchased Interest Value

Calculation of Company Adjustment Payment
$116,000,000 minus $108,819,000 = $7,181,000

($116,000,000 minus Actual Purchased Interest Value) = Company Adjustment Payment

Calculation of Amount Payable by Purchaser Pursuant to Section 1.7(c)
$10,000,000 minus $7,181,000 = $2,819,000

(Holdback Amount minus Company Adjustment Payment) = Amount payable by Purchaser

Scenario 3: Actual Purchased Interest Value exceeds $116,000,000

Assumptions:

- Actual 2008 EBITDA = $32,000,000
- Actual Net Debt = $1,000,000

Calculation of Actual Net Equity Value

($32,000,000 times 8.52) minus $1,000,000 = $271,640,000

(Actual 2008 EBITDA times 8.52) minus (Actual Net Debt) = Actual Net Equity Value

Calculation of Actual Purchased Interest Value

$271,640,000 times 0.45 = $122,238,000

(Actual Net Equity Value times 0.45) = Actual Purchased Interest Value

Because Actual Purchased Interest Value exceeds $116,000,000, Purchaser shall pay the Holdback Amount to the Company.

Exhibit D

Adjustments to 2008 EBITDA

Exhibit E

Unitholders Agreement

Exhibit F

Form of US Legal Opinion

Exhibit G

Form of UK Legal Opinion

Exhibit 10.16

EXECUTION VERSION

UNITHOLDERS AGREEMENT

by and between

SCHILLING ROBOTICS, INC.,

TYLER SHILLING

and

FMC TECHNOLOGIES, INC.

Dated as of

December 26, 2008

UNITHOLDERS AGREEMENT

THIS UNITHOLDERS AGREEMENT (this "Agreement") is made and entered into as of December 26, 2008 by and among Schilling Robotics, Inc., a Delaware corporation ("Schilling Inc."), Tyler Schilling, an individual ("Schilling"), and FMC Technologies, Inc., a Delaware corporation ("FMC"). Each of Schilling Inc., Schilling and FMC are referred to herein as a "Party" and collectively as the "Parties" and each of Schilling Inc. and Schilling are referred to herein as a "Schilling Party" and collectively as the "Schilling Parties."

R E C I T A L S

WHEREAS, Schilling Robotics, LLC, a Delaware limited liability company (the "Company"), FMC, Schilling and Schilling Inc. have entered into a Securities Purchase Agreement dated December 24, 2008 (the "Purchase Agreement");

WHEREAS, the Schilling Parties own, directly and indirectly, 100% of the issued and outstanding Units;

WHEREAS, after giving effect to the transactions contemplated by the Purchase Agreement, at the Closing (as defined in the Purchase Agreement), FMC will own, beneficially and of record, 45% of the issued and outstanding Units and the Schilling Parties will own, beneficially and of record, 55% of the issued and outstanding Units; and

WHEREAS, the obligations of Schilling Inc., Schilling, FMC and the Company under the Purchase Agreement are conditioned on each of the Parties executing and delivering this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
CERTAIN DEFINITIONS

1.1 Defined Terms. Capitalized terms undefined in the text of this Agreement shall have the following meanings:

"Accredited" means a Person who meets the qualifications of an "accredited investor" set forth in Rule 501 of Regulation D promulgated under the Securities Act of 1933.

"Affiliate" means, with respect to a Person, another Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“Board” means the Board of Directors, Board of Managers or other governing body of the Company.

“Bring-Along Right Closing” means a closing of the sale of the FMC Interest pursuant to the Bring-Along Right.

“Business Day” means any day other than a Saturday, Sunday, or a holiday on which commercial banks in the States of California or Texas are authorized by applicable law to close.

“Common Stock” means the common stock of FMC (or any Purchasing Entity, if applicable) or any other type of common equity security of FMC (or any Purchasing Entity, if applicable) entitled to vote for the election of directors generally.

“Company IPO” means the first underwritten sale of securities to the public by a corporation formed on conversion of the Company to a corporation under the terms of the Operating Agreement pursuant to a registration statement filed in accordance with the Securities Act, in which the gross proceeds to the Company (prior to underwriters’ commissions and expenses) shall be equal to or exceed $50,000,000.

“EBITDA” means, as to a particular Person and with respect to any applicable period, consolidated net income from continuing operations for such period calculated in accordance with GAAP, prior to the effect of income taxes, interest expense, interest income, depreciation, amortization, compensation expense related to the issuance of equity instruments (stock appreciation rights, options or similar instruments), gains or losses on disposal of assets or other extraordinary or non-recurring items recorded on the financial statements of such Person for each of the four most recently completed fiscal quarters immediately preceding the date of determination.

“Fair Market Value” means, with respect to a share of any security (including a share of Common Stock), (i) if such share is listed on the New York Stock Exchange (the “NYSE”) or, if the NYSE is not the primary national securities exchange or inter-dealer quotation system with respect to such security, another national securities exchange or quoted in an inter-dealer quotation system (or any foreign equivalent exchange or quotation system), as of the date of determination, the closing price of such share as listed or reported by the NYSE or the other primary national securities exchange or inter-dealer quotation system with respect to such security, as the case may be, or (ii) if such share is not so listed on a national securities exchange or quoted in an inter-dealer quotation system as of the date of determination, the value of a share of such security calculated by an independent investment banking firm of international repute (agreed to by the Parties) in accordance with a methodology to be agreed by the Parties, but which shall be a methodology customarily adopted in the valuation of securities of similarly situated businesses and pursuant to commonly accepted valuation principles.

“FMC Interest” means all of the issued and outstanding Units, other limited liability company membership interests of the Company, or any security convertible into or exchangeable for any of the foregoing, currently held or hereinafter acquired directly or indirectly by FMC.

"FMC Market Capitalization" means the amount equal to the average value over a period of 90 consecutive trading days immediately prior to the date of determination, calculated on a daily basis, of the product of the Fair Market Value of the Common Stock and the number of shares of Common Stock issued and outstanding.

"FMC Restatement" means a public announcement that FMC intends to restate its historical financial statements or otherwise discloses under Item 4.02 of Form 8-K that its board of directors has determined that its historical financial statements should no longer be relied upon.

"FMC Restatement Period" means that period of time commencing with the public announcement of an FMC Restatement and ending on the date that the last amendment to a Quarterly Report on Form 10-Q or Annual Report on Form 10-K required to be filed to give effect to such FMC Restatement has been filed with the SEC.

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

"Multiple" means the multiple calculated by dividing (a) the sum of (i) the FMC Market Capitalization and (ii) the Net Debt of FMC as of the end of the most recently completed fiscal quarter by (b) the EBITDA of FMC.

"Net Debt" means, as to a particular Person, the current and long-term indebtedness of such Person and its consolidated subsidiaries (including, without limitation, any obligations for borrowed money or for the deferred purchase price of property or services and any obligations under financing or capital leases or letters of credit), net of cash and cash equivalents. The Parties agree that, for purposes of this Agreement, Net Debt may be a negative number in the event that cash and cash equivalents is greater than current and long-term indebtedness, calculated on a consolidated basis.

"Net Exercise Price" means, in the case of a Stock Election, the Exercise Price less the Cash Advance.

"Operating Agreement" means that certain Amended and Restated Operating Agreement of the Company dated as of December 26, 2008, as amended from time to time.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Right of First Offer Closing" means the closing of the transactions contemplated by the exercise of the Right of First Offer.

"Right Securities" means the issued and outstanding Units, other limited liability company membership interests of the Company, or any security convertible into or exchangeable for any of the foregoing, currently held or hereinafter acquired directly or indirectly by the Schilling Parties (including Units held directly by Schilling Robotics Newco LLC, a Delaware limited liability company and wholly owned subsidiary of Schilling Inc.).

"Schilling Counsel Fees" means any fees or expenses (to the extent such fees or expenses are not fully discharged prior to the Right Closing) associated with legal counsel or other advisors to advise Persons other than FMC in connection with the exercise of the Right and incurred by, (i) in the case of a Stock Election, Schilling Inc. and the Company or (ii) in the case of a Cash Election, the Company.

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

"Securities Act" means the Securities Act of 1933, as amended.

"Third-Party Offer Closing" means the closing of the transactions contemplated by the terms of the Third-Party Offer.

"Transaction Closing" means a closing of (i) the sale of the Right Securities pursuant to the Right Closing, (ii) the Subsidiary Merger, (iii) the Right of First Offer Closing or (iv) a sale of the FMC Interest pursuant to the Bring-Along Right or the Tag-Along Right, whichever occurs first.

"Unit" is defined in the Operating Agreement.

1.2 Accounting Terms. Accounting terms not otherwise defined herein shall have the meanings assigned to such terms under GAAP.

ARTICLE II
RIGHT TO PURCHASE SCHILLING SECURITIES

2.1 Right to Purchase Outstanding Right Securities. The Schilling Parties hereby grant to FMC the right to purchase all (but not less than all) of the outstanding Right Securities (the "Right") at the price and during the period set forth below.

2.2 Exercise Period. FMC may deliver a Right Notice only during the period commencing on January 1, 2012 and ending on the close of business on December 31, 2013 (the "Right Period"), subject to the satisfaction of all other terms and conditions set forth herein.

2.3 Exercise of Right. FMC may exercise the Right only upon written notice (the "Right Notice") to the Schilling Parties and the Company, in accordance with Section 6.7.

2.4 Payment Upon Exercise of Right.

2.4.1 Schilling Parties Election. Within 30 Business Days after receipt of a Right Notice under Section 2.3, the Schilling Parties shall provide FMC with their written election (the "Schilling Consideration Election") to receive the Exercise Price (as defined below) in cash (a "Cash Election") or partially in cash with a majority of the Exercise Price in registered shares of Common Stock (a "Stock Election") as set forth in Section 2.4.3 below. Notwithstanding the foregoing, in the event that the Common Stock of FMC or a Purchasing Entity is not registered under Section 12 of the Securities Exchange Act of 1934 or is not publicly traded or listed on a national securities exchange or inter-dealer quotation system (or any foreign equivalent exchange or quotation system) at the time a Right Notice is delivered, the Parties acknowledge and agree that the shares deliverable under a Stock Election would not be required to be registered under the Securities Act of 1933 and that FMC or a Purchasing Entity shall be permitted to cause shareholders of Schilling Inc. who are not Accredited to receive cash in lieu of shares of stock in connection with such Subsidiary Merger.

2.4.2 Cash Election. If the Schilling Parties make a Cash Election, FMC shall deliver to the Schilling Parties at the Right Closing (as defined below) an amount (the "Exercise Price"), in immediately available funds, calculated in accordance with the following formula:

Exercise Price = (55% x ((E x M) – ND)) - SCF

Where:	E =	the EBITDA of the Company and its subsidiaries on a consolidated basis
	M =	the Multiple
	ND =	any Net Debt of the Company as of the Right Closing
	SCF =	any Schilling Counsel Fees

Subject to Section 2.9, for purposes of calculating the Multiple, the applicable date of determination shall be the date of delivery of the Right Notice. If the Schilling Parties make a Cash Election, the Schilling Parties agree to sell, convey, assign, transfer and deliver to FMC, and FMC agrees to purchase from the Schilling Parties at the Right Closing, the Right Securities, free and clear of all debts, liabilities, obligations, taxes, security interests, liens, pledges, charges and encumbrances of every kind (collectively, "Liens"). In the event that either of the Schilling Parties are obligated as of the Right Closing to pay any amounts to FMC pursuant to Article IX of the Purchase Agreement, the Exercise Price shall be further reduced by the amount of such obligation of the Schilling Party to FMC in full satisfaction and discharge of such obligation. The Schilling Parties shall allocate the Exercise Price between them in accordance with their relative ownership of Units.

2.4.2.1 The Exercise Price shall be reduced by 20% if at any time prior to the earlier of (i) the date FMC delivers a Right Notice or (ii) December 31, 2013, (x) Schilling voluntarily resigns from his employment with the Company or (y) Schilling's employment is terminated by the Board because (A) Schilling is absent from his duties with respect to the Company for a period exceeding 90 calendar days without approval of the Board or (B) Schilling is convicted or enters a plea of guilty or *nolo contendere* to either a felony or a crime of moral turpitude. Such adjustment of the Exercise Price shall be made, if applicable, regardless of whether a Cash Election or a Stock Election is made by the Schilling Parties.

2.4.2.2 If the Schilling Parties make a Stock Election and request that Schilling Inc. pay expenses (including Schilling Counsel fees) or other liabilities at or prior to the Right Closing, FMC will advance those amounts to Schilling Inc. in cash at least 5 Business Days prior to the Right Closing (the "Cash Advance").

2.4.3 Stock Election. If the Schilling Parties make a Stock Election, FMC and the Schilling Parties will promptly take all actions as are reasonably necessary and appropriate to cause Schilling Inc. to merge with and into a subsidiary of FMC in a transaction (x) that qualifies as a tax-free reorganization under Section 368 of the Internal Revenue Code of 1968, as amended (the "Code") (or any successor provision), (y) in which a wholly owned subsidiary of FMC merges with and into Schilling Inc. and (z) in which the stockholders of Schilling Inc. receive, pro rata, shares of Common Stock that are registered pursuant to a registration statement on Form S-4 (or any equivalent form) that has been declared effective or is deemed effective under the rules and regulations of the Securities and Exchange Commission and applicable state securities laws and are otherwise tradeable without restriction (except as otherwise provided in Section 2.4.1) (the "Subsidiary Merger"). The aggregate number of shares of Common Stock issuable to Schilling Inc. stockholders in the Subsidiary Merger shall be equal to (i) the product of (a) the Net Exercise Price (as may be adjusted under Section 2.4.2.1 above) and (b) 0.90, divided by (ii) the average Fair Market Value of the Common Stock during the 20 trading days immediately prior to the date the Right Notice is delivered pursuant to Section 2.3 hereof. Notwithstanding anything herein to the contrary, the obligation of FMC to consummate the Subsidiary Merger shall be subject to (A) the execution and delivery of a merger agreement in form and substance reasonably satisfactory to FMC, (B) the receipt of all necessary consents and approvals from the Board and stockholders of Schilling Inc., (C) the Schilling Parties shall have used best efforts to obtain a release in form and substance reasonably satisfactory to FMC executed and delivered by each of the stockholders of Schilling Inc. releasing Schilling Inc. and its Affiliates (including FMC after giving effect to the Subsidiary Merger) from any and all liabilities and obligations such Persons may have to such stockholder and any and all claims such stockholder may have against Schilling Inc. and its Affiliates, (D) holders representing no more than 5% of the outstanding capital stock of Schilling Inc. shall have validly elected to seek appraisal of their shares in accordance with Section 262 of the Delaware General Corporation Law and (E) Schilling Inc. will have a Net Debt of $0 as of the Right Closing. If Schilling Inc. makes a Stock Election, at the closing of the Subsidiary Merger, (i) the Schilling Parties agree to take all actions necessary to cause all of the outstanding capital stock of Schilling Inc. and all of the Right Securities, to be free and clear of all Liens at the Right Closing, and (ii) Schilling will convey any Units he then owns to Schilling Inc. In the event that the conditions precedent to the completion of the Subsidiary Merger are not satisfied or waived by FMC, then the Stock Election shall be deemed to be automatically converted to a Cash Election and the Schilling Parties shall be entitled to receive the cash consideration contemplated by Section 2.4.2.

2.5 Right Closing. The closing of the transactions contemplated by the exercise of the Right (the "Right Closing") shall take place at the offices of DLA Piper LLP (US), 400 Capitol Mall, Suite 2400, Sacramento, California (or such other place as the Schilling Parties and FMC may agree) on a Business Day no later than 60 calendar days following the delivery of the Schilling Consideration Election or, if later, the latest of (i) the 5th Business Day after the expiration or early termination of the waiting period under both the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") and any antitrust filings as may be required in any foreign jurisdiction (if either are applicable to the transactions contemplated by the exercise of the Right), (ii) the 30th Business Day after a registration statement filed under the Securities Act for the purpose of registering Common Stock issuable pursuant to the Subsidiary Merger (if applicable) is declared effective by the SEC (the "Right Closing Date") or (iii) the 10th Business Day following the determination of the EBITDA of the Company in accordance with Section 2.8. If the Schilling Parties make a Cash Election, the Schilling Parties agree to sell, convey, assign, transfer and deliver to FMC, and FMC agrees to purchase from the Schilling Parties at the Right Closing, the Right Securities, free and clear of all Liens. The Company shall be responsible for preparing, and FMC shall have the right to review, the Company's short-form income tax return for such year that the Right Closing occurs.

2.6 Taking of Necessary Action; Further Action. In the event the Right is exercised, each of the Parties agrees to use its commercially reasonable efforts to cause the transactions described in this Article II to occur as described herein and to take all actions as are necessary and appropriate to cause the Right Closing to occur including, but not limited to, (i) entering into customary agreements, which agreements shall contain representations, warranties and covenants (and indemnification provisions related thereto), in each case no less favorable to FMC than those contained in Articles II, VI, and IX of the Purchase Agreement, (ii) hiring counsel and other customary advisors, (iii) delivering customary certificates and documents supporting such customary agreements and (iv) furnishing appropriate information to the other Parties. If, at any time after the Right Closing, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest FMC with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the Schilling Parties agree to take, and will take, all such lawful and necessary action required to so do, so long as such action is not inconsistent with this Agreement.

2.7 Purchasing Entity. In the event that any Person acquires control of FMC (whether by merger, acquisition of securities, sale of all or substantially all of the assets of FMC or other transaction), all references herein to FMC shall be to such acquiring Person (or, in the event that FMC survives as a subsidiary of another Person, all references herein to FMC shall be to the ultimate parent of FMC) (in any such case, the "Purchasing Entity"). For the avoidance of doubt, in the event of such a transaction as described in the preceding sentence, all references herein to Common Stock, Fair Market Value, the EBITDA of FMC, FMC Market Capitalization, Multiple and Net Debt shall be calculated with respect to such Purchasing Entity as though such Purchasing Entity was FMC and, in the event of a Stock Election, the stockholders of Schilling Inc. would be entitled to receive Common Stock of such Purchasing Entity, *provided*, *however*, that in such case the Multiple used to calculate the Exercise Price shall be no less than the

Multiple as calculated on a hypothetical basis using the Fair Market Value, EBITDA of FMC, FMC Market Capitalization and Net Debt of FMC as though a Right Notice had been delivered immediately prior to the consummation of such acquisition of FMC (even if not then during the Right Period).

2.8 Determination of EBITDA; Resolution of Conflicts. Beginning no later than the first quarter of fiscal year 2011, the Company and its audit committee shall engage the Company's outside audit firm to conduct a review of it's interim financial statements for each of the first, second and third quarters of each fiscal year, under the standards and guidance for conducting interim reviews as set forth in Statement of Accounting Standards No. 100, Interim Financial Statements, as the same may be amended from time to time. Such quarterly reviews shall be made available to FMC upon request. In connection with the calculation of the Multiple and the Exercise Price, as the case may be, each of FMC (for purposes of calculating the Multiple) and Schilling Inc. (for purposes of calculating the Exercise Price) shall deliver promptly, but in any event within 20 calendar days after delivery of the Right Notice, to the other Party its calculation of its respective EBTIDA for purposes of such required calculations. Each such calculation shall include such additional information as is reasonably necessary to support such calculation. Each of FMC and Schilling Inc., as the case may be, shall have the right to object to the calculation of EBTIDA prepared by the other Party and such Parties agree to consult with one another to resolve any objections raised by either Party. In the event that either Party is not able to resolve any such objection, each of FMC and Schilling Inc. agree that the dispute shall be referred for determination (which determination shall be final and non-appealable and binding on the Parties) to a nationally-recognized independent public accounting firm that is not then under engagement by any of the Parties. Each of FMC and Schilling Inc. shall submit their proposed good faith calculation of the EBITDA calculation under dispute within 15 calendar days of the selection of the independent public accounting firm, and such accounting firm shall resolve the dispute through "baseball" arbitration. The Party whose calculation is not selected by the independent public accounting firm shall pay all costs and expenses incurred by each Party and the independent public accounting firm in connection with the resolution of the disputed calculation of the EBITDA.

2.9 Restatement of FMC Financial Statements. Notwithstanding anything herein to the contrary, in the event FMC delivers a Right Notice during an FMC Restatement Period or the 90 calendar days immediately following the end of the FMC Restatement Period, then the calculation of the Multiple (including the related FMC Market Capitalization, Net Debt and EBITDA of FMC) in such circumstance shall be made using as the date of determination the first trading day that is not less than seven calendar days before the commencement of the FMC Restatement Period rather than the date of delivery of the Right Notice. In the event that FMC delivers a Right Notice either before an FMC Restatement Period or after the 90th calendar day following the end of an FMC Restatement Period, then the Multiple shall be calculated in accordance with Section 2.4.2 without giving effect to this Section 2.9.

ARTICLE III
RIGHT OF FIRST OFFER

3.1 Right of First Offer. Subject to the terms and conditions specified in this Article III, the Schilling Parties hereby grant to FMC a right of first offer with respect to the sale of all of the Right Securities (the "Right of First Offer"), exercisable by FMC at any time after the expiration of the Right Period but prior to the closing of a Company IPO (the "Right of First Offer Period").

3.2 Initial Offer, Acceptance and Closing. At any time during the Right of First Offer Period, the Schilling Parties may deliver a proposal in writing to FMC, which contains the price and all other essential terms (including, if any Third Party Sale (as defined below) is contemplated, the identity of the proposed purchaser in such Third Party Sale), offering the sale of all but not less than all of the Right Securities to FMC (the "Initial Offer"). Upon receipt of an Initial Offer, FMC may elect to purchase the Right Securities by delivering a written notice to the Schilling Parties (the "Purchase Notice") indicating its desire to exercise its rights under Section 3.1 within 30 calendar days of its receipt of the Initial Offer (the "Acceptance"). If FMC timely delivers a Purchase Notice, the Schilling Parties and FMC shall establish a closing date (which shall be a Business Day) for the sale and purchase of the Right Securities (the "Right of First Offer Closing Date"), which Right of First Offer Closing Date shall be no later than 30 calendar days after the receipt of the Acceptance. On the Right of First Offer Closing Date, (i) the Schilling Parties shall deliver to FMC a certificate or certificates evidencing the Right Securities together with a stock transfer power executed in blank against receipt of immediately available funds in an amount equal to the purchase price set forth in the Initial Offer and (ii) FMC and the Schilling Parties shall enter into such customary agreements as are necessary to cause the Right of First Offer Closing to occur. All such agreements shall contain representations, warranties and covenants (and indemnification provisions related thereto) no less favorable to FMC than those contained in Articles II, VI and IX of the Purchase Agreement, and all Right Securities shall be delivered free and clear of any Liens.

3.3 Permitted Sale. If FMC declines the Initial Offer or does not timely deliver its Purchase Notice to the Schilling Parties, the Schilling Parties may, during a period of 120 calendar days after FMC notifies Schilling Inc. that it has declined the Initial Offer or after the end of the 30 day period that FMC may respond to the Initial Offer, as such 90-day period may be extended to obtain any necessary regulatory approvals, sell all (but not less than all) of the Right Securities to any Person (a "Third-Party Sale") for a price equal to or greater than the price set forth in the Initial Offer, and, if any other material terms are identified in the Initial Offer, on those terms (or those terms modified in a manner which would be no less favorable to FMC). If, at the end of such period, as such period may be extended to obtain any required regulatory approvals, the Schilling Parties have not completed the sale of the Right Securities in accordance with the foregoing, the restrictions in this Article III shall remain in effect with respect to the Right Securities.

3.4 Third-Party Offer. In the event the Schilling Parties receive a bona fide written offer from a third party to purchase all but not less than all of the Right Securities for a price and/or terms that are inferior to the Initial Offer (a "Third-Party Offer"), the Schilling Parties shall be prohibited from accepting such Third-Party Offer unless they shall have first given FMC notice of such Third-Party Offer (including the identity of the Person making such Third-Party Offer), whereupon FMC shall be entitled, during the following 30 calendar days after its receipt of such Third-Party Offer to match the Third-Party Offer by offering to purchase the Right Securities from the Schilling Parties on terms that are substantially identical to those contained in the Third-Party Offer. If FMC timely matches the Third-Party Offer, the Schilling Parties shall have been deemed to have accepted such offer and, with FMC, shall establish a closing date (which shall be a Business Day) for the sale and purchase of the Right Securities (the "Third-Party Offer Closing Date"), which Third-Party Offer Closing Date shall be no later than 30 calendar days after the date of delivery of FMC's acceptance of the Third-Party Offer, as such period may be extended to obtain any required regulatory approvals. On the Third-Party Offer Closing Date, (i) the Schilling Parties shall deliver to FMC a certificate or certificates evidencing the Right Securities together with a stock transfer power executed in blank against receipt of immediately available funds in an amount equal to the purchase price set forth in the Third-Party Offer and (ii) the Schilling Parties and FMC shall enter into such other customary agreements as are necessary to cause the Third-Party Offer Closing to occur. All such agreements shall contain representations, warranties and covenants (and indemnification provisions related thereto) no less favorable to FMC than those contained in Articles II, VI and IX of the Purchase Agreement, and all Right Securities shall be delivered free and clear of any Liens. If FMC declines or does not timely accept the Third-Party Offer, the Schilling Parties shall be entitled to complete the sale of the Right Securities on the terms of the Third-Party Offer; *provided*, *however*, if Schilling Inc. has not completed the transaction contemplated in the Third-Party Offer within 120 calendar days after FMC's acceptance or rejection of such offer, as such period may be extended to obtain any required regulatory approvals, Schilling shall again be subject to the terms of this Section 3.4.

ARTICLE IV
BRING-ALONG AND TAG-ALONG RIGHTS

4.1 Availability of Bring-Along Right and Tag-Along Right. The Bring-Along Right and Tag-Along Right set forth in this Article IV are available only if the Schilling Parties have first complied in all respects with their obligations under Article III hereof.

4.2 Bring-Along Right.

4.2.1 Subject to Section 4.1 hereof, if, at any time after the expiration of the Right Period, but prior to the closing of a Company IPO, the Schilling Parties agree to sell all (but not less than all) of the Right Securities to any third Person that is not an Affiliate of Schilling Inc. (the "Bring-Along Purchaser"), the Schilling Parties may give written notice to FMC of its intent to exercise its rights under this Section 4.2 (the "Bring-Along Notice"). The Bring-Along Notice shall include the material terms and conditions of the sale to the Bring-Along

Purchaser, including (i) the name and address of the proposed transferee, (ii) the proposed amount and form of consideration (and if such consideration consists in part or in whole of property other than cash, the Schilling Parties will provide such information, to the extent reasonably available to the Schilling Parties, relating to such non-cash consideration) and (iii) the proposed date of the Bring-Along Right Closing, which date shall be a Business Day and shall not be less than 20 calendar days nor more than 90 calendar days after the date the Bring-Along Notice is delivered.

4.2.2 Upon receipt of the Bring-Along Notice, FMC shall be obligated to deliver at the Bring-Along Right Closing a certificate or certificates evidencing the FMC Interest with a Unit transfer power executed in blank and shall thereby convey all of its right, title and interest in the FMC Interest, free and clear of any Liens, to the Bring-Along Purchaser. In addition, FMC shall be obligated (i) to enter into customary agreements together with the Schilling Parties relating to the transaction contemplated in the Bring-Along Notice (the "Bring-Along Transaction"), (ii) to agree to make to the Bring-Along Purchaser the same representations, warranties, covenants (other than standstill, non-compete and non-solicitation provisions and licenses or any other covenant that would require FMC to restrict or limit its or its Affiliates' business activities in any material respect) and indemnities as the Schilling Parties agree to make in connection with the Bring-Along Transaction; *provided*, *however*, that unless agreed to by FMC, FMC will not be required to make representations and warranties or provide indemnities pursuant to any agreement entered into to effect the Bring-Along Transaction other than representations and warranties related to title and ownership of the Units owned by FMC, consents, authority, power and legal right to enter into and consummate such agreements, and, in the event an escrow is established to secure breaches of representations and warranties, FMC will participate pro-rata in such escrow based on its ownership of Units, but its obligations under such escrow shall only be for the purpose of providing a remedy for any breach of the representations and warranties and indemnification obligations of FMC.

4.2.3 The obligations of FMC pursuant to this Section 4.2 are subject to the following conditions:

4.2.3.1 FMC and the Schilling Parties shall receive the same type and amount of consideration, at the same time, on a per Unit basis, from the Bring-Along Transaction; and

4.2.3.2 any expenses incurred by FMC or the Schilling Parties in relation to the Bring-Along Transaction as well as any indemnities, holdbacks, escrows and similar items relating to the Bring-Along Transaction that are not paid or established by the Company (other than those that relate to representations or indemnities concerning FMC's valid ownership of the FMC Interest or the Schilling Party's valid ownership of the Right Securities free and clear of all liens, claims or encumbrances, or FMC's or each of the Schilling Party's authority, power and legal right to enter into and consummate the Bring-Along Transaction) shall be paid or established by FMC and the Schilling Parties in accordance with their respective ownership of the Units; *provided*, *however*, that notwithstanding anything in this Section 4.2.3.1 to the contrary, any liability relating to representations and warranties (and related indemnities) and other indemnification obligations shall not exceed the proceeds received by FMC in the Bring-Along Transaction; and *provided further, however*, that FMC's obligations under any such holdback, escrow or similar item shall only apply for the purpose of providing a remedy for any breach of a representation or warranty provided by or other indemnification obligation agreed to by FMC.

4.3 Tag-Along Right.

4.3.1 Subject to Sections 4.1 and 4.2 hereof, if, at any time after the expiration of the Right Period, but prior to the closing of a Company IPO, any of the Schilling Parties receives an offer from, and agrees to sell (a "Tag-Along Transaction") any of the Right Securities to, any third party that is not an Affiliate of Schilling Inc. (the "Tag-Along Purchaser"), such Schilling Party will provide written notice of such sale to FMC (the "Tag-Along Notice"). The Tag-Along Notice shall include the material terms and conditions of the offer from the Tag-Along Purchaser, including (i) the name and address of the proposed transferee, (ii) the proposed amount and form of consideration (and if such consideration consists in whole or in part of property other than cash, such Schilling Party will provide such information, to the extent reasonably available to such Schilling Party, relating to such non-cash consideration) and (iii) the proposed date of the Tag-Along Right Closing, which shall not be less than 20 Business Days after the delivery of the Tag-Along Notice.

4.3.2 FMC shall have the right (the "Tag-Along Right"), exercisable by delivery of a written notice to the Schilling Parties, at any time within 15 Business Days after receipt of the Tag Along Notice from a Schilling Party, indicating whether FMC desires to transfer any of the FMC Interest concurrently with such Schilling Party in accordance with the terms of this Section 4.3, upon the terms included in the Tag-Along Notice. Failure of FMC to provide such written notice within such 15 Business-Day period after actual receipt of notice from a Schilling Party shall constitute a forfeiture by FMC of any and all Tag-Along Rights with respect to such Tag-Along Notice. If the Tag-Along Purchaser is unwilling to purchase all of the Units requested to be included by FMC in the Tag-Along Transaction, then each Party shall reduce, on a pro rata basis, based on their respective ownership interests in the Company, the amount of such Units that each otherwise would have sold so as to permit each Party to sell the number of Units (determined after giving effect to such reduction) that the Tag-Along Purchaser is willing to purchase.

4.3.3 In connection with the Tag-Along Transaction, FMC and such Schilling Party agrees and understands that FMC shall execute and deliver the same agreements and commitments from the Tag-Along Purchaser with respect to the purchase of the FMC Interest as such Schilling Party obtains from the Tag-Along Purchaser with respect to the purchase of the Right Securities, including (i) the time of transfer, (ii) that FMC and such Schilling Party shall receive the same type and amount of consideration, at the same time, on a per Unit basis, from the Tag-Along Transaction and (iii) other terms and conditions upon which the transfer is to be made. In addition, FMC and the Schilling Parties agree that each party shall bear its own costs or expenses in relation to the Tag-Along Transaction. If the transferee refuses to purchase the FMC Interest pursuant to the exercise of the Tag-Along Right, such Schilling Party shall be prohibited from selling any Right Securities to such Tag-Along Purchaser.

4.3.4 In connection with the Tag-Along Transaction, FMC shall be obligated to agree to make to the Tag-Along Purchaser the same representations, warranties, covenants (other than standstill, non-compete and non-solicitation provisions and licenses or any other covenant that would require FMC to restrict or limit its or its Affiliates' business activities in any material respect) and indemnities as such Schilling Party agrees to make in connection with the Tag-Along Transaction; *provided*, *however*, that unless agreed to by FMC, FMC will not be required to make representations and warranties or provide indemnities pursuant to any agreement entered into to effect the Tag-Along Transaction other than representations and warranties related to title and ownership of the Units owned by FMC, consents, authority, power and legal right to enter into and consummate such agreements, and, in the event an escrow is established to secure breaches of representations and warranties, FMC will participate pro-rata in such escrow based on its ownership of Units.

ARTICLE V
COVENANTS

5.1 Preservation of Tax-Free Status. At all times during the Right Period and following a Stock Election, FMC will use commercially reasonable efforts to cooperate with Schilling Inc. to preserve the treatment of the issuance of Common Stock to Schilling Inc. in a Merger as a tax-free reorganization in compliance with Section 368 of the Code.

5.2 Transfer of Right Securities. Each of the Schilling Parties hereby covenants and agrees, on behalf of itself and each of its affiliates, that, during the term of this Agreement it shall not complete any transfer of any Right Securities by sale, assignment, pledge, hypothecation or otherwise, (collectively, a "Transfer") unless such Schilling Party shall have first obtained the written agreement of the transferee thereof to be bound by the terms and conditions contained herein.

5.3 Transfer of the FMC Interest. FMC hereby covenants and agrees, on behalf of itself and each of its Affiliates, that, during the term of this Agreement it shall not complete any Transfer of any securities (as permitted by and pursuant to the terms and conditions of the Operating Agreement) that constitute any part of the FMC Interest, unless FMC shall have first obtained the written agreement of the transferee thereof to be bound by the terms and conditions contained herein.

5.4 Legend. In addition to any legend required pursuant to the Purchase Agreement or any other agreement between the Parties and the Company, each certificate evidencing Right Securities or certificates for securities constituting the FMC Interest issued on or after the date hereof shall be stamped or otherwise imprinted with a legend in substantially the following form:

> "THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER SET FORTH IN A UNITHOLDERS AGREEMENT DATED DECEMBER 26, 2008, AND MAY NOT BE SOLD, ASSIGNED, TRANSFERRED, ENCUMBERED OR IN ANY MANNER DISPOSED OF EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF SUCH AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME. A COPY OF SUCH AGREEMENT, AS AMENDED FROM TIME TO TIME, SHALL BE FURNISHED WITHOUT CHARGE BY THE COMPANY TO THE HOLDER HEREOF UPON WRITTEN REQUEST."

5.5 Termination. This Agreement shall terminate and be of no further force and effect upon the completion of a Company IPO.

ARTICLE VI
MISCELLANEOUS

6.1 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any person other than the Parties hereto and their respective successors and permitted assigns.

6.2 Entire Agreement. This Agreement and the documents and instruments and other agreements among the Parties referred to herein constitute the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, with respect to the subject matter hereof. In case of any conflict between the terms of this Agreement and the Operating Agreement, this Agreement shall govern to the extent of such conflict.

6.3 Resolution of Conflicts.

6.3.1 Except as set forth in Section 2.8, in the event of any dispute or disagreement among any of the Parties as to the interpretation of any provision of this Agreement or the performance of obligations hereunder, after good faith negotiation by the Parties, any Party may, by written notice to the other Parties, demand arbitration of the matter, and such arbitration shall be administered by the Center for Public Resources Institute for Dispute Resolutions (“CPR”) in accordance with its then prevailing Rules for Non-Administered Arbitration of Business Disputes, by an arbitrator or arbitrators as selected and described in Section 6.3.2. The arbitrator(s) shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrators, to discover relevant information from the opposing Parties about the subject matter of the dispute. The arbitrator(s) shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including, without limitation, attorneys’ fees and costs, to the same extent as a court of competent jurisdiction, should the arbitrator(s) determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator(s) shall be written, shall be in accordance with applicable law, including, without limitation, the United States Arbitration Act, 9 U.S.C. §1 *et. seq.* (the "USAA"), and with this Agreement, and shall be supported by written findings of fact and conclusions of law which shall set forth the basis for such decision. The decision of the arbitrator(s) shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction, and the Parties shall be entitled to act in accordance with such decision.

6.3.2 For all disputes for which the aggregate disputed dollar amount is equal to or less than $3,000,000, the Parties shall agree upon a single arbitrator to oversee such dispute. If the Parties cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the dispute shall be managed by a single independent arbitrator to be chosen by the CPR. For all disputes for which the aggregate disputed dollar amount exceeds $3,000,000, such dispute shall be managed and ruled upon by a panel of three arbitrators. FMC, on the one hand, and the Schilling Parties, on the other hand, shall each name one of the arbitrators, and the third arbitrator shall be chosen by FMC and the Schilling Parties or, if FMC and the Schilling Parties cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the third arbitrator shall be an independent arbitrator selected by the CPR.

6.3.3 Any arbitration under this Section 6.3 shall be governed by the USAA and shall be held in Delaware. The non-prevailing Party to an arbitration shall pay its own expenses, the fees of the arbitrator, any fees and expenses of the CPR, and the expenses, including attorneys' fees and costs, reasonably incurred by the other Party to the arbitration.

6.4 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No Party may assign this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Party hereto; *provided*, *however*, that FMC shall be permitted to assign its rights, interests or obligations hereunder to any Affiliate of FMC or to any other Person in connection with the sale of all or substantially all of FMC's assets to such Person.

6.5 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6.6 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

6.7 Notices. All notices, requests, demands, claims, and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly delivered two Business Days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one Business Day after it is sent via a reputable nationwide overnight courier service or sent via facsimile (with acknowledgment of complete transmission) with a confirmation copy by registered or certified mail, in each case to the intended recipient as set forth below:

if to Schilling Inc.:

SCHILLING ROBOTICS, INC.
201 Cousteau Place
Davis, CA 95618
Attention: Philip F. Otto
Facsimile No.: (530) 753-8092

with a copy to

DLA PIPER LLP (US)
400 Capitol Mall, Suite 2400
Sacramento, CA 95814
Attention: Gilles S. Attia
Facsimile No.: (916) 930-3201

if to Schilling:

Tyler Schilling
c/o SCHILLING ROBOTICS, INC.
201 Cousteau Place
Davis, CA 95618
Facsimile No.: (530) 753-8092

if to FMC:

FMC TECHNOLOGIES, INC.
1803 Gears Road
Houston, TX 77067
Attention: General Counsel
Facsimile No.: (281) 591-4102

with a copy to

Vinson & Elkins L.L.P.
1001 Fannin Street, Suite 2500
Houston, TX 77002
Attention: T. Mark Kelly
Facsimile No.: (713) 615-5531

Any Party may give any notice, request, demand, claim, or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the Party for whom it is intended. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

6.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the State of Delaware.

6.9 Amendments and Waivers. The Parties may mutually amend any provision of this Agreement at any time. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties hereto. No waiver by any Party hereto of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation, breach of such warranty or covenant.

6.10 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed, provided that this Agreement shall not then substantially deprive either party of the bargained-for performance of the other Party.

6.11 Expenses. Except as otherwise provided herein, all fees and expenses (including all legal and accounting fees and expenses and all other expenses) incurred by FMC in connection with this Agreement and the transactions contemplated hereby shall be paid by FMC, whether or not a transaction is consummated, and all reasonable transaction costs incurred by the Schilling Parties in connection with this Agreement and the transactions contemplated hereby shall be paid by the Schilling Parties.

6.12 Specific Performance. Each Party acknowledges that it would be impossible to determine the amount of damages that would result from any breach by him, her or it of any of the provisions of this Agreement and that the remedy at law for any breach, or threatened breach, of any of such provisions would likely be inadequate and, accordingly, agrees that each Party shall, in addition to any other rights or remedies which it may have, be entitled to seek such equitable and injunctive relief as may be available from any court of competent jurisdiction to compel specific performance of, or restrain such Party from violating any of, such provisions. In connection with any action or proceeding for injunctive relief, each Party hereby waives the claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have each provision of this Agreement specifically enforced against him, her or it, without the necessity of posting bond or other security against it.

6.13 Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with, and not exclusive of, any other remedy conferred hereby or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

[*Remainder of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase Right and Right of First Offer Agreement as of the date first above written.

SCHILLING ROBOTICS, INC.

By: ______________________________

Name: Philip F. Otto

Title: Chief Executive Officer

TYLER SCHILLING

By: ______________________________

Name: Tyler Schilling

FMC TECHNOLOGIES, INC.

By: ______________________________

Name: Jeffrey W. Carr

Title: Vice President, General Counsel & Secretary

Exhibit 10.17

EXECUTION VERSION

AMENDED AND RESTATED OPERATING AGREEMENT
OF
SCHILLING ROBOTICS, LLC,
a Delaware Limited Liability Company

THE SECURITIES REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE SECURITIES REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS WHICH ARE SET FORTH HEREIN.

Effective as of December 26, 2008

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AMENDED AND RESTATED OPERATING AGREEMENT
OF
SCHILLING ROBOTICS, LLC,
a Delaware Limited Liability Company

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") is made and effective as of December 26, 2008 (the "Effective Date"), by and among the Persons who have executed a counterpart of this Agreement as of the Effective Date, and those other Persons who from time to time pursuant to this Agreement execute a counterpart of this Agreement and are admitted to the Company as Members. Each signatory to this Agreement is a "Party" to this Agreement.

RECITALS

A. A certificate of formation for the Company has previously been filed with the Secretary of State of Delaware.

B. The Company is currently governed by the Limited Liability Company Operating Agreement as Amended dated effective as of December 28, 2007 (the "Existing Agreement") entered into by Schilling Robotics Newco, LLC a Delaware limited liability company ("Newco LLC") as sole Member.

C. Newco LLC transferred 55 Units in the Company to Schilling Robotics, Inc., a Delaware corporation ("Inc.") pursuant to a Purchase Agreement by and among the Company, Newco LLC and Inc., dated as of December 28, 2007.

D. The Parties desire to amend and restated the Existing Agreement in its entirety to reflect (i) the transfer of 42 Units in the Company by Inc. to FMC Technologies, Inc., a Delaware corporation ("FMC"), (ii) the transfer of one tenth of one (0.1) Unit by Inc. to Tyler Schilling, (iii) the issuance of Class A-1 Units to FMC and (iv) otherwise as provided in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of and reliance upon the mutual covenants, rights and obligations set forth herein, the benefits to be derived therefrom and other good and valuable consideration, the receipt and the sufficiency of which each Member acknowledges, the Members hereby adopt as Operating Agreement for the Company as follows:

ARTICLE I
DEFINITIONS

1.1 Certain Definitions. As used in this Agreement, the following terms have the following meanings:

(a) "Accredited" means a Person who meets the qualifications of an "accredited investor" set forth in Rule 501 of Regulation D promulgated under the Securities Act.

(b) “Act” shall mean the Delaware Limited Liability Company Act, Delaware Code Title 6, Sections 18-601 et seq., as amended from time to time.

(c) “Actual Tax” of a Member for any fiscal year shall mean the amount of federal, state and local income tax that would be payable by the Member with respect to the taxable income from the Company allocable to the Member for the fiscal year of the Company if the Member were subject on such income to: (a) the highest combined marginal rate of federal and state income tax applicable to individuals subject to taxation in the state of California plus (b) the highest rate to which an S corporation is subject to income tax under the California Revenue and Taxation Code.

(d) “Adjusted Capital Account” means the Capital Account maintained for each Member, (a) increased by any amounts that such Member is obligated to restore or is treated as obligated to restore under Treasury Regulation Sections 1.704 1(b)(2)(ii)(c), 1.704 2(g)(1) and 1.704 2(i)(5) and (b) decreased by any amounts described in Treasury Regulation Sections 1.704 1(b)(2)(ii)(d)(4), (5) and (6) with respect to such Member.

(e) “Affiliate” means, with respect to a Person, another Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

(f) “Agreement” has the meaning given such term in the first paragraph of this Agreement.

(g) “Assignee” means a person to whom a Membership Interest has been assigned in accordance with the terms of this Agreement but who has not been admitted as a Member in accordance with the terms hereof.

(h) “Audit Committee” has the meaning set forth in Section 6.13.

(i) “Board” means the Board of Directors of the Company, composed of the individuals designated pursuant to Section 6.2.

(j) “Book Value” means, with respect to any Company property, the Company’s adjusted basis for federal income tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treasury Regulation Sections 1.704-1(b)(2)(iv)(d)-(g).

(k) “Bring Along Right” is defined in the Unitholders Agreement.

(l) “Business Day” means any day other than a Saturday, a Sunday or a holiday on which banks in the State of California are closed for business.

(m) “Capital Account” shall have the meaning set forth in Section 4.1.

(n) "Capital Contribution" means the contribution made by a Member to the capital of the Company, whether in cash, in other property or otherwise, pursuant to the terms and conditions of this Agreement. The amount of any Capital Contribution shall be the amount of cash and the fair market value of any other property so contributed (as determined by the Board in its reasonable good faith judgment).

(o) "Certificate" shall have the meaning set forth in Section 2.1.

(p) "Chairman of the Board" has the meaning set forth in Section 7.2

(q) "Chief Executive Officer" has the meaning set forth in Section 7.3.

(r) "Chief Financial Officer" has the meaning set forth in Section 7.7.

(s) "Class" means a class of Units.

(t) "Class A Unit" has the meaning set forth in Section 3.1(a). The Company shall have 100 authorized Class A Units or such greater number as is determined from time to time by the Board. Any or all rights and preferences of the Holders of the Class A Units may be waived or amended from time to time, in whole or in part, by the consent of the Holders representing a majority of the then outstanding Class A Units.

(u) "Class A Unit Holder" means a Person holding at least a fraction of a Class A Unit.

(v) "Class A-1 Liquidation Preference" has the meaning set forth in Section 4.2(c)(ii).

(w) "Class A-1 Unit" has the meaning set forth in Section 3.1(a). The Company shall have 5.45 authorized Class A-1 Units or such greater number as is determined by the Board. Any or all of the rights and preferences of the Holders of the Class A-1 Units may be waived or amended from time to time, in whole or in part, by the consent of the Holders representing a majority of the then outstanding Class A-1 Units.

(x) "Class A-1 Unit Holder" means a Person holding one or more Class A-1 Units.

(y) "CPR" is defined in Section 15.12(a).

(z) "Code" means the United States Internal Revenue Code of 1986, as amended, and any successor statute.

(aa) "Company" means Schilling Robotics, LLC, a Delaware limited liability company.

(bb) "Company Adjustment Payment" has the meaning set forth in the Securities Purchase Agreement.

(cc) “Company Asset(s)” means any and all property and assets, whether real or personal, tangible or intangible, or otherwise of the Company.

(dd) “Company Minimum Gain” has the meaning set forth for “partnership minimum gain” in Treasury Regulation Section 1.704-2(d).

(ee) “Compensation Committee” has the meaning set forth in Section 6.14.

(ff) “Confidential Information” has the meaning set forth in Section 8.17.

(gg) “Corporation” has the meaning set forth in Article XIII.

(hh) “Covered Person” means each current and former Member, the tax matters partner, Director, Officer and each of their respective Affiliates, officers, directors, liquidators, partners, stockholders, managers, members and employees, in each case whether or not such Person continues to have the applicable status referred to above.

(ii) “Director” shall have the meaning set forth in Section 6.2.

(jj) “Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year, except that if the book value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning book value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning book value using any reasonable method selected by the Board.

(kk) “Distributable Cash Flow” means, for any period, all cash received by the Company from all sources during such period, minus the sum of (i) all expenditures paid by the Company during the period (excluding depreciation or other noncash expenses, but including capital expenditures), (ii) amortization of principal of indebtedness for borrowed money of the Company for the period and (iii) such additions to the reserves of the Company for contingencies, working capital or future expansion needs as the Board may reasonably determine to be necessary. Notwithstanding the preceding sentence, Capital Contributions shall not be taken into account in computing Distributable Cash Flow for any period.

(ll) “Distribution” means each distribution made by the Company to a Member or other Holder of Units, whether in cash, property or any Security of the Company and whether by dividend, liquidating distributions or otherwise; provided that neither of the following shall be a Distribution: (a) any redemption or repurchase by the Company of any Membership Interest, Unit or other Security for any reason (after which such Unit, Membership Interest or Security shall cease to be outstanding) or (b) any recapitalization or exchange of any Units, or any subdivision (by unit split, unit dividend or otherwise) or any combination (by reverse unit split or otherwise) of any outstanding Units. For the purposes of this Agreement, the amount of a distribution of property or any Security shall equal the fair market value of such property or Security (determined by the Board in its reasonable good faith judgment).

(mm) “Effective Date” has the meaning set forth in the first paragraph of this Agreement.

(nn) “Entity” means any partnership, corporation, association, cooperative, joint stock company, trust, limited liability company, business trust, joint venture, unincorporated organization, employee benefits plan and governmental entity (or any department, agency or political subdivision thereof).

(oo) “Equity Securities” has the meaning set forth in Section 3.5.

(pp) “Estimated Tax” means the then most current estimate of the Actual Tax, as made in good faith by the Board.

(qq) “Fiscal Year” of the Company means the Company’s annual accounting period ending in December of each year or such other date as may be required by the Code or determined by the Board.

(rr) “FMC” means FMC Technologies, Inc., a Delaware corporation.

(ss) “FMC Director” has the meaning set forth in Section 6.2(a).

(tt) “FMC Liquidation Preference” has the meaning set forth in Section 4.2(d)(i).

(uu) “GAAP” means United States generally accepted accounting principles, consistently applied.

(vv) “Holdback Amount” has the meaning set forth in the Securities Purchase Agreement.

(ww) “Holder” means any Person holding Units (or any fraction of a Unit) of the Company.

(xx) “Inc.” has the meaning set forth in Recital C.

(yy) “Inc. Liquidation Preference” has the meaning set forth in Section 4.2(b).

(zz) “Incorporation Plan” has the meaning set forth in Article XIV.

(aaa) “Indebtedness” means (a) all indebtedness, whether or not contingent, for borrowed money or for the deferred purchase price of property or services, (including but not limited to amounts referred to by the Company as equipment debt, AR debt, and “growth capital” debt), (b) any other indebtedness that is evidenced by a note, bond, debenture or similar instrument, (c) all obligations under financing leases or letters of credit, (d) all obligations in respect of acceptances issued or created, (e) all liabilities secured by any lien on any property,

(f) all non compete payments due to owners of businesses acquired by the Company and (g) all guarantee obligations, in each case including the principal amount thereof, any accrued interest thereon and any prepayment premiums or fees or termination fees with respect thereto, *provided, however*, that trade payables and accruals incurred in the ordinary course of business shall not be considered Indebtedness hereunder.

(bbb) “Indemnifying Member” has the meaning set forth in Section 15.9.

(ccc) “Liquidation Event” means any of the following: (a) any voluntary or involuntary liquidation, dissolution or winding up of the Company, (b) merger or consolidation of the Company into or with another entity (other than a merger or consolidation in which the holders of interests of the Company immediately prior to such merger or consolidation continue to hold a majority of the outstanding voting power of such surviving entity), (c) the sale, conveyance, lease, exclusive license or transfer of all or substantially all of the assets of the Company, or (d) any purchase of shares of Membership Interests of the Company (either through a negotiated Membership Interest purchase or a tender for such membership interests) by any Person or group that did not beneficially own a majority of the outstanding Class A and Class A-1 Units of the Company immediately prior to such purchase, the effect of which is that such Person or group beneficially owns at least a majority of such Units immediately after such purchase. A Section 351 Transaction is not a Liquidation Event.

(ddd) “Major Holder” has the meaning set forth in Section 3.6.

(eee) “Member” means any Person executing this Agreement as of the date of this Agreement as a member or hereafter admitted to the Company as a member in accordance with this Agreement and the Act, but does not include any Person who has ceased to be a member of the Company or who no longer owns any Units or fraction of a Unit. The Members shall collectively constitute the “members” (as that term is defined in the Act) of the Company.

(fff) “Member Nonrecourse Debt Minimum Gain” has the meaning set forth for “partner nonrecourse debt minimum gain” in Treasury Regulation Section 1.704-2(i).

(ggg) “Membership Interest” means the rights of a Member in distributions (liquidating and otherwise) and allocations of the Net Profit, Net Loss, items thereof and credits of the Company. Membership Interests shall be divided into Class A Units, Class A-1 Units, and such other Units, if any, as authorized by the Board.

(hhh) “Net Profit” and “Net Loss” means, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code but with the following adjustments:

(i) Items allocated pursuant to Section 5.4(c) shall not be included in such taxable income or loss;

(ii) Items required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in such taxable income or loss;

(iii) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this paragraph shall be added to such taxable income or loss;

(iv) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to § 1.704-1(b)(2)(iv)(i) of the Treasury Regulations and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss;

(v) In the event book value of any Company Asset is adjusted pursuant to Section 4.1(c) of this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profit or Net Loss;

(vi) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year;

(vii) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the book value of the property disposed of (adjusted for accumulated Depreciation with respect to such property), notwithstanding that the adjusted tax basis of such property differs from its book value; and

(viii) To the extent that § 1.704-1(b)(2)(iv)(m)(2) or (4) of the Treasury Regulations requires an adjustment to the adjusted tax basis of any Company Asset pursuant to Section 734(b) or Section 743(b) of the Code to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the assets) from the disposition of the asset for purposes of computing Net Profit or Net Loss and adjusting the Members' Capital Accounts.

(iii) "Newco LLC Liquidation Preference" has the meaning set forth in Section 4.2(a).

(jjj) "Newco LLC" has the meaning set forth in Recital B.

(kkk) "New Securities" means Securities issued by the Company after the Effective Date.

(lll) "Nonrecourse Deductions" has the meaning set forth in Treasury Regulation Section 1.704-2(b)(1).

(mmm) "Offer Notice" has the meaning set forth in Section 3.6(a).

(nnn) "Person" has the meaning set forth in the Act.

(ooo) "Proceeding" has the meaning set forth in Section 9.2.

(ppp) “Qualified Public Offering” means a firm commitment underwritten public offering pursuant to an effective registration statement on Form S-1 or Form SB-2 (or a successor form) under the Securities Act covering the offer and sale of stock with aggregate proceeds to the Company (prior to underwriters’ commissions and expenses) of not less than $50,000,000.

(qqq) “Remaining Securities” has the meaning set forth in Section 3.6(b).

(rrr) “Secretary” has the meaning set forth in Section 7.6

(sss) “Section 351 Transaction” has the meaning set forth in Article XIII.

(ttt) “Security” means and includes common and preferred stock (including warrants, rights, put and call options and other options relating thereto or any combination thereof), notes, bonds debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and other property or interests commonly regarded as securities (including cash and bank deposits).

(uuu) “Securities Act” means the Securities Act of 1933, as amended.

(vvv) “Securities Purchase Agreement” means that certain Securities Purchase Agreement, dated as of December 24, 2008, by and among Inc., the Company, FMC and Tyler Schilling.

(www) “Schilling” means Tyler Schilling, an individual.

(xxx) “Schilling Parties” means Schilling Robotics, Newco LLC and Schilling.

(yyy) “Schilling Robotics, Inc.” means Schilling Robotics, Inc. a Delaware corporation.

(zzz) “Tag-Along Right” is defined in the Unitholders Agreement.

(aaaa) “Tax” or “Taxes” means federal, state, county, local, foreign or other income, gross receipts, ad valorem, franchise, profits, sales or use, transfer, registration, excise, utility, environmental, communications, real or personal property, capital stock, license, payroll, wage or other withholding, employment, social security, severance, stamp, occupation, estimated, value added and other taxes of any kind whatsoever (including, without limitation, deficiencies, penalties, additions to tax, and interest attributable thereto) whether disputed or not.

(bbbb) “Transaction Documents” means this Agreement, the Securities Purchase Agreement and the Unitholders Agreement.

(cccc) “Transfer” means any sale, transfer, assignment, pledge, mortgage, exchange, hypothecation, grant of a security interest or other direct or indirect disposition or encumbrance of an interest (including, without limitation, by operation of law) or the acts thereof. The terms “Transferee,” “Transferred,” and other forms of the word “Transfer” shall have correlative meanings.

(dddd) “Treasury Regulations” means the United States income tax regulations promulgated under the Code and effective as of the date hereof. Such term shall, at the Board’s sole discretion, be deemed to include any future amendments to such regulations and any corresponding provisions of succeeding regulations (whether or not such amendments and corresponding provisions are mandatory or discretionary).

(eeee) “Unit” means any or all of a Class A Unit, a Class A-1 Unit and any other Class of Unit authorized by the Board as the context may require.

(ffff) “Unitholders Agreement” means that certain Unitholders Agreement, dated as of the date of this Agreement by and between FMC and Inc.

(gggg) “USAA” is defined in Section 15.12(a).

(hhhh) “Vice Presidents” has the meaning set forth in Section 7.5.

1.2 Construction. Whenever the context requires, the gender of all words used in this Agreement includes the masculine, feminine and neuter. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Schedules are to schedules attached hereto, each of which is made a part hereof for all purposes.

ARTICLE II
ORGANIZATION

2.1 Formation. The Company, under the name “Schilling Robotics, LLC” was organized as a Delaware limited liability company by the filing of a Certificate of Formation (the “Certificate”) under and pursuant to the Act. The rights and liabilities of the Members shall be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement, to the extent permitted by the Act, shall control.

2.2 Name. The name of the Company is “Schilling Robotics, LLC,” and all business of the Company shall be conducted under that name or such other name that the Board may select from time to time in compliance with applicable law.

2.3 Registered Office; Registered Agent; Principal Office; Other Offices. The registered office of the Company required by the Act to be maintained in the State of Delaware shall be the office of the initial registered agent named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The registered agent of the Company in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Board may designate from time to time in the manner provided by law. The principal office of the Company shall be at such place as the Board may designate from time to time, which need not be in the State of Delaware, and the Company shall maintain its records there. The Company may have such other offices as the Board may designate from time to time.

2.4 Purposes. The purpose of the Company shall be to engage in any lawful activity or business with the exception of the business of granting policies of insurance, or assuming insurance risks or banking, and to engage in any other lawful activities which are not prohibited by the Act or the laws of any jurisdictions in which the Company engages in business. The foregoing shall be construed as a statement of purposes and not legal authority, and the Company shall have all necessary authority to perform such acts as permitted by law pursuant to this Agreement.

2.5 Foreign Qualification. The Board shall cause the Company to comply with all requirements necessary to qualify the Company as a foreign limited liability company in such jurisdictions in which the Company engages or proposes to engage in business if required by applicable law. At the request of the Board, each Member shall execute, acknowledge, swear to and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.6 Term. The term of the Company commenced on the date the Certificate was filed with the office of the Secretary of State of Delaware and shall be perpetual in such Certificate, if any, unless earlier terminated and dissolved pursuant to Section 13.1 of this Agreement.

2.7 No State-Law Partnership. The Members intend that the Company shall not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member or the Company shall be a partner or joint venturer of any other Member or the Company, for any purposes other than federal and, if applicable, state and local tax purposes, and this Agreement shall not be construed to the contrary. The Members intend that the Company shall be treated as a partnership for federal and, if applicable, state and local income tax purposes, and each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE III
MEMBERSHIP INTERESTS; UNITS; CONVERSION; REDEMPTION; VOTING

3.1 Membership Interests. The Company's Membership Interests shall be divided into Class A Unit Interests (each a "Class A Unit"), Class A-1 Interests (each a "Class A-1 Unit"), and each other Unit Interest, if any, as determined by the Board. Each Holder of Class A Units shall be entitled to the distributions and other payments and rights as are prescribed for Holders of Class A Units by this Agreement. Each Holder of Class A-1 Units shall be entitled to the distributions and other payments and rights as are prescribed for Holders of Class A-1 Units by this Agreement. The rights of a Unit shall be applied to a fraction of a Unit in proportion to such fraction of a Unit held. When a Person is admitted as a new Member after the Effective Date in accordance with the provisions of this Agreement, such Person shall execute a counterpart to this Agreement and the name of such Person along with the Capital Contribution and type and number of Units owned by such Person shall be added to the books and records of the Company.

3.2 Liability of Members. Except as expressly set forth in this Agreement or the Act, no Member shall have any personal liability whatsoever in the Member's capacity as a Member, whether to the Company, to any of the other Members, to the creditors of the Company or to any other third party, for the debts, liabilities, commitments or any other obligations of the Company or for any losses of the Company. Each Member hereby consents to the exercise by the Board and the Company's officers of the powers conferred on them by this Agreement. No Member shall take, or cause to be taken, any action that would result in any other Member having any personal liability for the obligations of the Company.

3.3 No Authority to Bind Company. No Member (in such Person's capacity as a Member) shall have the authority or power to represent or act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditures or incur any obligations on behalf of the Company (unless such Member is an officer or Director of the Company authorized to do such act, make such expenditure or incur such expenditure and such Member is acting in such capacity).

3.4 Voting Rights. With respect to any matter to be voted on by the Members in general (without respect to Class of Unit), each Member shall be entitled to one vote per Unit held. With respect to matters to be voted on by Members by Class of Unit, each Member holding Class A Units shall be entitled to one vote per Class A Unit, and each Member holding Class A-1 Units shall be entitled to one vote per Class A-1 Unit. There shall be no cumulative voting for any purpose, including, without limitation, in the election of Directors.

3.5 Issuance of Additional Units and Interests. Subject to Section 3.6 and Section 8.10, the Board shall have the right to cause the Company to issue (a) additional Units in the Company (including other Classes thereof having different rights beyond those Class A Units and Class A-1 Units), (b) obligations, evidences of indebtedness or other Securities or interests convertible or exchangeable into Units and (c) warrants, options or other rights to purchase or otherwise acquire Units (collectively, "Equity Securities"); provided that at any time following the date hereof, the Company shall not issue Units to any Person unless such Person shall have executed a counterpart to this Agreement and provided such information as is required by the Board. Upon execution of any such counterpart, such Person shall become a Member under this Agreement.

3.6 Preemptive Right. Subject to the terms of this Article III and applicable securities laws, if the Company proposes to offer or sell any Equity Securities, the Company shall give each Holder of at least five (5) Units and who is Accredited (each a "Major Holder") the right to purchase such Major Holder's pro rata share (or any part thereof) of such Equity Securities, on the same terms as the Company is willing to sell such Equity Securities to any other Person or Entity. A Major Holder's pro rata share of the Equity Securities shall be equal to the proportion that the number of Units held by such Major Holder bears to the number of Units held by all of the Major Holders on the date of the Company's written notice referred to in Section 3.6(a) below. A Major Holder shall be entitled to apportion this right of first offer among itself and its Affiliates in such proportions as it deems appropriate.

(a) Notice; Exercise of Right. Prior to any sale or issuance by the Company of any Equity Securities, the Company shall give notice (the "Offer Notice") to each Major Holder of its intention to sell and issue such Equity Securities, setting forth (i) the terms and conditions under which it proposes to make such sale (including the price and the proposed issuance date), (ii) the amount, kind and type of Equity Securities to be included in the issuance, including the designations, preferences, rights, powers and duties to be attached to such Equity

Securities and (iii) the identity of the proposed purchaser, and shall offer to such Major Holder the opportunity to purchase its pro rata share (which pro rata share shall be calculated as of the date of such notice) of such Equity Securities at the same price, and on the same terms and conditions and at the same time as the Equity Securities are proposed to be issued by the Company. Within twenty (20) days after receipt of the Offer Notice, each Major Holder shall notify the Company whether or not such Major Holder desires to purchase its pro rata share, or any part thereof, of the Equity Securities so offered. If any Major Holder notifies the Company of its desire to purchase its pro rata share of such Equity Securities, the closing of the sale shall occur within sixty (60) days of the date that the Offer Notice is given or, if later, the closing date for the proposed sale of such Equity Securities to third parties.

(b) Permitted Sales. With respect to any Equity Securities that are not subscribed for by Major Holders after the end of the twenty (20) day period specified in Section 3.6(a) ("Remaining Securities"), the Company may, during a period of ninety (90) days following the end of such period, offer and sell such Remaining Securities to other Persons or Entities upon the terms and conditions not less favorable to the Company than those set forth in the notice to the Major Holders. In the event the Company has not issued and sold all of the Remaining Securities within said 90-day period, the Company shall not thereafter issue or sell any Equity Securities without first offering such securities to the Major Holders pursuant to this Section 3.6.

(c) Exceptions. The preemptive rights contained in this Section 3.6 shall not apply to issuances by the Company (i) of Class A-1 Units pursuant to the Securities Purchase Agreement, (ii) pursuant to a Qualified Public Offering, (iii) to any person that is not a Member or an Affiliate thereof as consideration in any acquisition by the Company or any of its subsidiaries of the assets or Securities of another entity (including in connection with a joint venture, strategic investment and/or acquisition of technology or intellectual property) that is approved in accordance with this Agreement, or (iv) in connection with any split, distribution or recapitalization of the Company.

ARTICLE IV
CAPITAL ACCOUNTS

4.1 Establishment and Determination of Capital Accounts.

(a) A Capital Account shall be maintained for each Member in accordance with the requirements of Section 704(b) of the Code and the Treasury Regulations promulgated thereunder. The Capital Account balances of the Members as of the Effective Date are as set forth on the books and records of the Company as of the Effective Date.

(b) Each Member's Capital Account shall be:

(i) increased by the Capital Contributions made by such Member from and after the date of this Agreement;

(ii) increased by items of income or gain which are allocated to such Member under Article V;

(iii) decreased by the items of loss and deduction which are allocated to the Member under Article V; and

(iv) decreased by the amount of any cash and the fair market value of any Company Asset distributed to such Member (net of any liability assumed by the Member or to which the distributed property is subject).

(c) If a Company Asset other than cash is distributed to one or more Members, the value of such property shall be restated on the books of the Company at its fair market value immediately prior to such distribution and the separate Capital Accounts of each Member shall be restated to reflect such adjustment, determined as if the Company had sold such Company Asset for its fair market value and the resulting gain or loss had been credited or charged to the Members' Capital Accounts as provided in this Agreement. Following such adjustment to the Company's books, the separate Capital Accounts of the Members receiving the distributions shall be adjusted to reflect the amount of the distribution.

(d) If from and after the Effective Date, a Person is admitted to the Company as an additional Member, money or property is contributed to the Company in other than a de minimis amount in exchange for a Membership Interest, or money or property is distributed to a Member in exchange for a Membership Interest, the Board shall cause the book value of Company Assets to be restated on the Company's books to their respective fair market values, and the unrealized gain or loss inherent in each Company Asset which has not previously been taken into account under this subsection (d) shall be reflected in the separate Capital Accounts of the Members, determined by allocating such unrealized gain or loss to the Members as if there had been a taxable disposition of the Company Asset at its fair market value on such date. The fair market value of Company Assets shall be determined in good faith by the Board.

(e) Upon a permitted transfer of any Membership Interest in accordance with the terms of this Agreement, the Assignee shall succeed to the Capital Account and Capital Account balance of the transferor which is attributable to such Membership Interest.

(f) The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with and shall be applied in accordance with §§ 1.704-1(b) and 1.704-2 of the Treasury Regulations.

4.2 Capital Contributions.

(a) Newco LLC has previously made Capital Contributions to the Company and been issued 45 Units. As of the Effective Date, those Units are converted into 45 Class A Units and pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) the Capital Account balance of Newco LLC is restated to be $95,142,857 (the "Newco LLC Liquidation Preference").

(b) Inc. has previously acquired 54.9 Units in the Company and as of the Effective Date has transferred 42 of those Units to FMC. As of the Effective Date, the remaining 12.9 Units held by Inc. are converted into Class A Units and pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) the Capital Account balance of Inc. with respect to those 12.9 Class A Units is restated to be $27,274,285 (the "Inc. Liquidation Preference").

(c) Schilling has acquired previously acquired one tenth of one (0.10) Unit in the Company. As of the Effective Date, the 0.10 Unit held by Schilling is converted into 0.10 Class A Unit and pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) the Capital Account balance of Schilling with respect to such 0.10 Class A Unit is restated to be $211,429.

(d) As of the Effective Date:

(i) FMC has purchased 42 Units from Schilling Robotics, Inc., those purchased Units are converted into Class A Units and pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(f) the Capital Account of FMC with respect to those 42 Class A Units is restated to be $88,800,000 (the "FMC Liquidation Preference"); and

(ii) FMC has made a Capital Contribution to the Company of $17,200,000 (the "Class A-1 Liquidation Preference") in exchange for a credit to its Capital Account in that amount and is issued 5.45 Class A-1 Units. Any amount paid to the Company by FMC pursuant to Section 1.8(c)(ii) of the Securities Purchase Agreement because the Holdback Amount exceeds the Company Adjustment Payment shall be an additional Capital Contribution from FMC for the 5.45 Class A-1 Units and shall increase the Class A-1 Liquidation Preference by the dollar amount paid. Any amount paid by the Company to FMC pursuant to Section 1.8(c)(i) of the Securities Purchase Agreement because the Company Adjustment Payment exceeds the Holdback Amount shall be a distribution to FMC and shall decrease the Class A-1 Liquidation Preference by the dollar amount distributed to FMC. In connection with the issuance of the 5.45 Class A-1 Units and all Contributions to be made by FMC pursuant to this Section 4.2(d)(ii), the Company warrants that the Board and management of the Company, will, during the period that FMC continues to hold a majority of the Class A-1 Units, continue to operate the Company in the ordinary course and in conformity with all legal and regulatory requirements including adherence to GAAP.

4.3 Additional Capital Contributions.

(a) Subject to Section 8.10(h), the Board shall have the right to cause the Company to issue New Securities.

(b) No Member shall be required by the terms of this Agreement to make additional Capital Contributions to the Company.

4.4 Withdrawals; Interest. Except as expressly provided in this Agreement or as approved by the Board, no Member or Assignee may withdraw from the Company or receive the return of, or interest on, such Member's Capital Contributions, Capital Account, or other amounts.

4.5 Loans from Members. Subject to Section 8.10, any Member may make loans to the Company on such terms and conditions as are approved by the Board; provided that such terms and conditions are no more favorable to such lending Member than those which would be agreed to in an orderly transaction with a willing, unaffiliated lender in an arm's-length transaction. Any loan by a Member to the Company shall not be considered a Capital Contribution. The amount of any such loan shall be a debt of the Company to such Member and shall be payable or collectible in accordance with the terms and conditions upon which such loan is made.

4.6 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

ARTICLE V
PRIORITY PAYMENTS; DISTRIBUTIONS; ALLOCATIONS

5.1 Tax Distributions.

(a) Within 10 days after the end of each calendar quarter, the Board shall cause the Company to make a distribution of Distributable Cash Flow to each holder of Units in an amount equal to (i) 80% of the Member's Estimated Tax for the portion of the Fiscal Year ending on the last day of such quarter, reduced by (ii) the aggregate prior distributions made to the Member pursuant to this Section 5.1(a) and Section 5.2 with respect to such Fiscal Year. A distribution otherwise payable to a Member pursuant to this Section 5.1(a) may be prorated, as determined by the Board, in the case of any Member who is the holder of Units for less than the entire relevant calendar quarter. To the extent distributions made to a Member under this Section 5.1(a) would cause the aggregate distributions of Estimated Tax amounts to be made to the Members in a manner other than based on their respective Units, adjusting distributions shall be made one or Members as necessary so that the aggregate distributions made to the Members under this Section 5.1(a) are made to the Members based on their Units.

(b) Within 90 days after the end of each Fiscal Year, the Board shall cause the Company to make a distribution of Distributable Cash Flow to each holder of Units in an amount equal to (i) the Member's Actual Tax for the Fiscal Year, reduced by (ii) the aggregate prior distributions made to the Member with respect to such Fiscal Year made pursuant to Sections 5.1(a) and 5.2. Each such distribution shall be accompanied by information concerning the calculation of such Actual Tax distribution. A distribution otherwise payable to a Member pursuant to this Section 5.1(b) may be prorated, as determined by the Board, in the case of any Member who is the holder of Units for less than an entire Fiscal Year. To the extent distributions made to a Member under this Section 5.1(b) would cause the aggregate distributions of Actual Tax amounts to be made to the Members in a manner other than based on their respective Units, adjusting distributions shall be made one or Members as necessary so that the aggregate distributions made to the Members under this Section 5.1(b) are made to the Members based on their Units.

(c) Notwithstanding the provisions of Section 5.1(a) and 5.1(b), no distribution shall be required to be made with respect to:(i) any Fiscal Year (or portion thereof) ending on or before December 28, 2007 or (ii) any transaction contemplated by the Securities Purchase Agreement.

5.2 Other Distributions. Subject to Section 8.10(b),the Board may from time to time cause the Company to make other distributions of the Company's Distributable Cash Flow for any period net of any tax distribution pursuant to Section 5.1, but only to the extent that any such distribution does not impair the Company's ability to make a tax distribution pursuant to Section 5.1 in the current or following quarter. All distributions of Distributable Cash Flow under this Section 5.2 shall be made to the Holders of Units based on their respective Units.

5.3 Periodic Allocations. As of the end of each Fiscal Year of the Company, the Net Loss or Net Profit of the Company for the Fiscal Year shall be determined and allocated among the Members in accordance with this Article V.

5.4 Allocation of Net Profit or Net Loss.

(a) Allocation of Net Profit – In General. Except as provided in Section 5.5, the Net Profit for a Fiscal Year shall be allocated among the Members in the following order of priorities:

(i) First, Net Profits shall be allocated among the Members who were allocated Net Losses pursuant to Section 5.4(b)(ii), and shall be allocated to them in proportion to the Net Losses allocated to them pursuant to Section 5.4(b)(ii) until the aggregate Net Profits allocated to such Members pursuant to this Section 5.4(a)(i) for such Fiscal Year and all prior Fiscal Years is equal to the aggregate Net Losses allocated under Section 5.4(b)(ii) for all prior Fiscal Years; and

(ii) The remaining Net Profit for the Fiscal Year, if any, shall be allocated pro rata among the Holders of Units, based on their respective Units.

(b) Allocation of Net Loss – In General. Except as provided in Section 5.5, the Net Loss for a Fiscal Year shall be allocated among the Members in the following order of priorities:

(i) First, Net Loss shall be allocated among the Holders of Units based upon the excess, if any, of each such Holder's Adjusted Capital Account balance over such Holder's Liquidation Preference until all such excesses are reduced to zero; and

(ii) The remaining Net Loss for the Fiscal Year shall be allocated the Holders of Units, based on their respective Units.

(c) Special Allocations. Notwithstanding any other provisions of this Section 5.4, the following special allocations shall be made for each taxable period:

(i) Nonrecourse Deductions for any taxable year shall be allocated to the Members in accordance with their respective Units held.

(ii) Member Nonrecourse Deductions for any taxable year shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulation Section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss. This Section 5.4(c)(ii) is intended to comply with the provisions of Treasury Regulation Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) Notwithstanding any other provision of this Section 6.2, if there is a net decrease in Minimum Gain during any taxable year, each Member shall be allocated items of Company income and gain for such year (and, if necessary, subsequent taxable years) in the manner and amounts provided in Treasury Regulation Sections 1.704-2(f)(6), (g)(2) and (j)(2)(i). For purposes of this Section 5.4(c), each Member's Capital Account shall be determined, and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.4 with respect to such taxable year. This Section 5.4(c)(iii) is intended to comply with the partner minimum gain chargeback requirement in Treasury Regulation Section 1.704-2(f) and shall be interpreted consistently therewith.

(iv) Notwithstanding the other provisions of this Section 6.2 (other than Section 6.2(c)(iii) above), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any taxable year, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such taxable year shall be allocated items of Company income and gain for such year (and, if necessary, subsequent taxable years) in the manner and amounts provided in Treasury Regulation Section 1.704-2(i)(4) and (j)(2)(ii). For purposes of this Section 5.4(c), each Member's Adjusted Capital Account balance shall be determined, and the allocation of income and gain required hereunder shall be effected, prior to the application of any other allocations pursuant to this Section 5.4, other than Section 5.4(c)(iii) above, with respect to such taxable year. This Section 5.4(c)(iv) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in Treasury Regulation Section 1.704 2(i)(4) and shall be interpreted consistently therewith.

(v) Except as provided in Sections 5.4(c)(iii) and 5.4(c)(iv) above, in the event any Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by such Treasury Regulation, the deficit balance, if any, in its Adjusted Capital Account created by such adjustment, allocation or distribution as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 5.4(c)(iii), 5.4(c)(iv) or 5.4(c)(vi).

(vi) In the event any Member has a deficit balance in its Adjusted Capital Account at the end of any taxable year, such Member shall be allocated items of Company gross income and gain in the amount of such excess as quickly as possible; provided, however, that an allocation pursuant to this Section 5.4(c)(vi) shall be made only if and to the extent that such Member would have a deficit balance in its Adjusted Capital Account after all other allocations provided in this Section 5.4(c) (other than Section 5.4(c)(v)) have been tentatively made as if Section 5.4(c)(v) and this Section 5.4(c)(vi) were not in this Agreement.

(vii) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Sections 734(b) or 743(b) is required, pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts as a result of a distribution in liquidation of a Member's Interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such item of gain or loss shall be allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such provisions.

(d) Allocation of Net Profits or Net Losses from and after a Liquidation Event. Notwithstanding the foregoing and except as provided in Section 5.5, if, upon the final dissolution and termination of the Company and after taking into account all allocations of Net Profit and Net Loss (and items thereof) under this Article V from and after a Liquidation Event, the positive Capital Account balance limits of Section 13.2(a)(iv) would prevent the distribution priority that would otherwise occur under that Section 13.2(a)(iv) without that limit, then gross items of Income (and other tax items) for the taxable year of the Liquidation Event and thereafter, and, to the extent permitted under of the Code, gross items of income (and other tax items) for the immediately preceding taxable year, shall be allocated to the Members to increase or decrease Capital Account balances, as the case may be, so that to the maximum extent possible the final distributions on dissolution and termination of the Company will occur in under the priorities provided for under Section 13.2(a)(iv) as they would occur if there were no positive Capital Account balance limit in Section 13.2(a)(iv).

5.5 Tax Allocations.

(a) Except as otherwise provided in this Section 5.5, the Members' distributive shares of items of Company taxable income, gross income, gain, loss, deduction, and credit shall be determined according to their respective shares of Net Profits or Net Losses to which such items relate.

(b) Items of Company taxable income, gain, loss and deduction with respect to any property contributed to the Company by a Member shall be allocated among the Members in accordance with Section 704(c) of the Code so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair value as of the date of contribution. If the book value of any Company Asset is adjusted pursuant to Section 4.1(d), subsequent allocations of items of taxable income, gain, loss and deduction with respect to such Company Asset shall take account of any variation between the adjusted book value and its book value immediately before the adjustment in the same manner as under Section 704(c) of the Code. The Company shall adopt the remedial method of allocation described in Treasury Regulation Section 1.704-3 or such other method as reasonably made by the Board in good faith.

(c) Allocations pursuant to this Section 5.5 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits or Net Losses, distributions, or other Company items pursuant to any provision of this Agreement.

5.6 Changes in Member's Interests. If during any fiscal period of the Company there is a change in any Member's Membership Interest the Net Profit, Net Loss, or any other items allocable among the Members under this Article V shall be determined on a daily, monthly, or other basis, as determined by the Board using any permissible method under Section 706 of the Code and the Treasury Regulations promulgated thereunder.

ARTICLE VI
MANAGEMENT OF THE COMPANY

6.1 Management of the Company. Subject to the rights of the Holders of a majority of the Class A-1 Units as set forth in this Agreement, the Board shall have full and exclusive right, power, and authority to manage the affairs of the Company and make all decisions with respect thereto, except for those matters expressly reserved to the Members by this Agreement or the Act. The Board shall have the right, power and authority, in the conduct and management of the business of the Company, to do or cause to be done any and all acts or things deemed by the Board to be necessary, appropriate, or desirable to carry out or further the business of the Company. The right, power, and authority of the Board pursuant to this Agreement shall be liberally construed to encompass all acts and activities in which a limited liability company may engage under the Act. Notwithstanding the foregoing, no Director in his or her individual capacity shall have the authority to manage the Company or approve matters relating to, or otherwise to bind the Company, such powers being reserved to the entire Board acting pursuant to Section 6.10 and to such agents of the Company as are designated by the Board.

6.2 Composition and Election of the Board. The Board shall initially be comprised of six (6) Persons (each, a "Director"). That number may not be increased without the consent of the holders of a majority of the Class A-1 Units.

(a) The Directors shall be elected as follows: two Directors shall be elected by the holders of a majority of the Class A-1 Units (each such Director is an "FMC Director"), and the remaining four (4) Directors shall be elected by the holders of a majority of the Class A Units (each such Director is a "Class A Director"). The names of the Directors constituting the initial Board are set forth on Schedule A hereto. That Schedule shall be amended from time to time by a designee of the Board as necessary to reflect changes in the Persons serving as Directors. Each such Director shall serve until such Director's successor is elected by the appropriate action of the Person or Persons entitled to elect such Director, as the case may be, or until the Director's earlier death, disability, resignation or removal. The Person or Persons entitled to elect a Director shall also be entitled to remove that Director and to fill any vacancy that occurs by the death, disability, resignation or removal of such Director.

(b) Any Director may resign at any time upon written notice to the Board. A resignation shall be effective when given unless the notice specifies a different date. Upon the resignation, removal, or death of a Director, the Member or Members entitled to vote for such Director's successor shall elect the Director's successor at a special meeting called for such purpose. Directors need not be residents of the State of Delaware or the state of the Company's principal place of business and need not be Members of the Company.

(c) Prior to and as a condition to appointment or election to the Board of Directors each Director shall execute and deliver to the Company the form of Officer and Director Indemnification Agreement attached hereto as Exhibit B.

6.3 Duties of the Board. Subject to Section 8.19, each Director shall owe the same fiduciary duty to the Company and its Members that such Director would owe to a corporation and its stockholders as a member of the board of directors thereof under the laws of the State of Delaware No Director shall hold a position as an officer or director of any organization listed on Schedule C hereto that requires such Director to owe fiduciary duties to any organization listed on Schedule C hereto without the consent of a majority of the Class A Units and the Class A-1 Units, voting as separate classes.

6.4 Meetings. Regular quarterly meetings of the Board shall be held on the first Tuesday in March, June, September and December, in each year, beginning with the year 2009 or on such other date as shall be fixed by the Board. If the day fixed for the annual meeting shall be a legal holiday in the State of Delaware, such meeting shall be held on the next succeeding business day. The Board may provide, by resolution fixing the time and place thereof, for the holding of additional regular meetings, which may thereafter be held at the designated time and place, without further notice thereof to the Members. Special meetings of the Board may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, or a majority of the Directors.

6.5 Place of Meetings. The Board may designate any place as the place of meeting for any meeting of the Board either within or without the State of Delaware.

6.6 Notice of Special Meetings. Unless waived, written notice of any special meeting, stating the place, day, and hour thereof shall be given by mail, facsimile or e-mail at least two (2) Business Days prior thereto by the person or persons calling the meeting, to each Director. Neither the business to be transacted at, nor the purpose of, any meeting of the Board need be specified in the notice or waiver of notice of such meeting. Attendance of a Director at a meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

6.7 Spontaneous Meeting of Board. If all of the Directors meet at any time and place (including telephonically) and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and any Company action which may be taken at a meeting of the Board may be taken at such meeting.

6.8 Quorum. At any meeting of the Board, at least a majority of the authorized number of Directors (which majority must include at least one FMC Director) must be present to constitute a quorum for the transaction of any business which may be taken at such a meeting; *provided, however,* that in the event a properly noticed meeting of the Board is adjourned for lack of a quorum solely due to the failure of at least one FMC Director to be present, a quorum shall be deemed present at the next properly noticed Board meeting if a majority of the authorized number of Directors is present, irrespective of whether at least one FMC Director is present or not. In the absence of a quorum, any Director present at such meeting in person or by telephone shall have the power to adjourn such meeting until a quorum shall be constituted.

6.9 Voting. Each Director, only if present in person or telephonically at a meeting of the Board, shall be entitled to vote, and each Director shall have one vote upon any matter submitted to a vote at a meeting of the Board; *provided, however*, that (a) any FMC Director shall be entitled to cast an aggregate of up to two votes at any meeting if (i) the other FMC Director is not present at such meeting and has provided a written proxy to vote at such meeting to the FMC Director who is present at such meeting or (ii) if there is a vacancy in the FMC Directors (for example, if the holders of the Class A-1 Units have only designated one of their two directors, then that one FMC Director may cast a total of two votes on matters presented to the Board) and (b) any Class A Director shall be entitled to cast an aggregate of up to two votes at any meeting if (i) any other Class A Director is not present at such meeting and has provided a written proxy to vote at such meeting to such Class A Director who is present at such meeting) or (ii) if there is a vacancy in the Class A Directors (for example, if the holders of the Class A Units have only designated three of their four directors, then one Class A Director may cast a total of two votes on matters presented to the Board).

6.10 Manner of Acting. Unless otherwise required by the Act or this Agreement, the affirmative vote of a majority of the Directors present at the meeting shall be the act of the Board for all purposes of this Agreement, and no single Director, in the capacity as such, may make any decisions or take any actions on behalf of the Company without the affirmative vote of a majority of the Directors.

6.11 Written Actions. Any action required to be, or which may be, taken by the Board or any committee thereof may be taken without a meeting if consented thereto in a writing setting forth the action so taken and signed by all of the Directors. Such consent shall have the same force and effect as a vote of a majority of the Directors at a meeting, and the execution of such consent by a Director shall constitute attendance or presence in person at a meeting of the Board or any such committee, as the case may be.

6.12 Committees. Subject to Sections 6.13 and 6.14, the Board, by resolution adopted by a majority of the Directors, may designate two (2) or more Directors to constitute a committee; provided however, that at least one FMC Director and one Class A Director shall be members of every committee of the Board, including (a) the Audit Committee and (b) the Compensation Committee. Each such committee, to the extent provided in the resolution, shall have and exercise all of the authority of the Board in the management of the Company; *provided, however,* that any or all members of each such committee who are Class A Directors may be removed at any time, with or without cause, by vote of a majority of the Class A Directors and any or all members of each such committee who are FMC Directors may be removed at any time, with or without cause, by vote of a majority of the FMC Directors. Unless the Board provides for a greater number, a majority of the members constituting each such committee (which majority must include at least one FMC Director) shall be a quorum and the act of such majority shall be the act of such committee; *provided, however,* that in the event a properly noticed meeting of a committee of the Board is adjourned for lack of a quorum solely due to the failure of at least one FMC Director to be present, a quorum shall be deemed present at the next properly noticed committee meeting if a majority of the members constituting such committee is present, irrespective of whether at least one FMC Director is present or not.

6.13 Audit Committee. The Company shall have an audit committee (the “Audit Committee”). The Audit Committee shall be a Board Committee and shall be subject to the provisions of Section 6.12. The primary duties of the Audit Committee are to monitor the integrity of the Company's financial reporting process and systems of internal controls regarding finance, accounting and legal compliance, to monitor the independence and performance of Company's independent auditors, and to provide an avenue of communication among the independent auditors, management and the Board. The Audit Committee shall perform such other duties as shall from time to time be delegated to the Audit Committee by the Board. The Audit Committee shall consist solely of members of the Board who are not officers or employees of the Company.

6.14 Compensation Committee. The Company shall have a compensation committee (the "Compensation Committee"). The Compensation Committee shall be a Board committee and shall be subject to the provisions of Section 6.12. The Compensation Committee shall have the authority to establish the compensation and benefits for officers of the Company and its subsidiaries, including, without limitation, fixing the cash compensation of such persons, establishing and administering compensation and benefit plans for such persons and determining awards thereunder, and entering into (or amending existing) employment and compensation agreements with any such persons. The Compensation Committee shall perform such other duties as shall from time to time be delegated to the Compensation Committee by the Board.

6.15 Specific Authority of the Board. Subject to the rights of the holders of a Majority of the Class A-1 Units, the following actions of the Company (or the approval of such actions by the Company in its capacity as a holder of any Subsidiaries' equity interests) shall be taken only by the affirmative vote, consent or approval of a majority of the Directors:

(a) The making of any distribution by the Company pursuant to Section 5.2;

(b) The issuance by the Company of any additional Units, Securities, equity interests or debt of the Company;

(c) The hiring or termination of officers of the Company;

(d) Agreeing to sell the Company or a controlling interest in the Company, merge the Company with any other Entity, or sell or exclusively license all or substantially all of the Company's assets; and

(e) Making any acquisition of any stock or other Securities of another entity unless it is a wholly-owned entity of the Company.

6.16 Compensation. Each Director shall be reimbursed for the reasonable expenses, if any, incurred by the Director in attending each meeting of the Board, and shall be paid such compensation, if any, as the Board may determine from time to time; provided however, that no FMC Director or any Director who is also an employee of the Company shall receive any compensation from the Company for that person's service as a Director prior to a Qualified Public Offering.

6.17 Telephonic Participation in Meetings. Directors may participate in any meeting of the Board through telephonic or similar communications equipment by means of which all Directors participating in the meeting can hear one another, and such participation shall constitute presence in person at such meeting.

6.18 Subsidiaries. The holders of a majority of the Class A-1 Units shall have the right to designate at least one FMC Director as a director of any Subsidiary and any actions by the board (or equivalent) of any Subsidiary shall require a majority of the votes cast on such matter, including at least one vote from such FMC Director.

ARTICLE VII
OFFICERS

7.1 Designation of Officers. The Board may, from time to time, designate one or more individuals to be officers of the Company. No officer need be a resident of the State of Delaware or a Member. Any officers so designated shall have such authority and perform such duties as the Board may, from time to time, prescribe or as may be provided in this Agreement. The Board may assign titles to particular officers. Unless the Board otherwise specifies, if the title is one commonly used for officers of a business corporation, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made to such officer by the Board pursuant to this Section 7.1. Each officer shall hold office until the officer’s successor shall be duly designated and shall qualify or until the officer’s death or until the officer shall resign or shall have been removed. Any number of offices may be held by the same individual. The salaries or other compensation, if any, of the officers and agents of the Company shall be fixed from time to time by the Board. The current officers of the Company are set forth on Schedule B hereto.

7.2 The Chairman of the Board. The “Chairman of the Board”, if any, shall be selected by a majority of the Board; and shall, subject to the direction of the Board, perform such executive, supervisory and management functions and duties as may be assigned to him from time to time by the Board. The Chairman of the Board, if present, presides at all meetings of the Board.

7.3 Chief Executive Officer. The “Chief Executive Officer” shall be the chief executive officer of the Company and shall, subject to the control of the Board, have general supervision, direction and control of the business and the other officers of the Company. The Chief Executive Officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation formed under the Delaware General Corporation Law, and shall have such other powers and duties as may be prescribed by the Board or this Agreement.

7.4 President. The “President” shall be the chief operating officer of the Company and shall have general supervision, direction and control of the business and the other officers of the Company (other than the Chief Executive Officer). In the absence of the Chief Executive Officer, the President shall perform the duties of the Chief Executive Officer, and when so acting shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The President shall have such other powers and duties as may be prescribed by the Chief Executive Officer, the Board or this Agreement.

7.5 Vice Presidents. In the absence or disability of the President, the “Vice Presidents”, if any, in order of their rank as fixed by the Board, or, if not ranked, a vice president designated by the Board, shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. The Vice Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board, this Agreement, the Chief Executive Officer or the President.

7.6 Secretary. The "Secretary" shall keep or cause to be kept, at the principal executive office or such other place as the Board may direct, a book of minutes of all meetings and actions of the Members and the Board, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names the Members or members of the Board present or represented at such meetings, and the proceedings thereof. The Secretary shall keep, or cause to be kept, at the principal executive office or at the office of the Company's transfer agent or registrar, as determined by resolution of the Board, the registers provided for in Section 11.3. The Secretary shall give, or cause to be given, notice of all meetings of the Members or Board required by this Agreement or by applicable law to be given, and the Secretary shall keep the seal of the Company, if one be adopted, in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board, this Agreement, the Chief Executive Officer or the President.

7.7 Chief Financial Officer. The "Chief Financial Officer" shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, Capital Accounts and Membership Interests. The books of account shall at all reasonable times be open to inspection by any Member and Director. The Chief Financial Officer shall deposit all cash and other valuables in the name and to the credit of the Company with such depositories as may be designated by the Board. The Chief Financial Officer shall disburse the funds of the Company as may be ordered by the President, shall render to the President and any Members and any Director, whenever they request it, an account of all of the Chief Financial Officer's transactions as the Chief Financial Officer and of the financial condition of the Company, and shall have other powers and perform such other duties as may be prescribed by the Board, this Agreement, the Chief Executive Officer or the President.

7.8 Powers of Execution.

(a) All checks and other demands for money and notes and other instruments for the payment of money shall be signed on behalf of the Company by the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or such other officer or officers or by such other Person or Persons as the Board may from time to time designate. The signature of any such officer or other Person may be a facsimile if so authorized by the Board.

(b) All contracts, deeds and instruments may be signed on behalf of the Company by the Chairman of the Board, the Chief Executive Officer, the President, by any Vice President or by such other Person or Persons as the Board may from time to time designate.

(c) Subject to Section 6.18, all shares of stock, partnership interests, limited liability company interests or other interests or Securities owned by the Company in any other

Entity shall be voted or represented, as the case may be, on behalf of the Company by the Chairman of the Board, the Chief Executive Officer, the President or such other Person or Persons as shall be prescribed by the Board.

(d) The officers, to the extent of their powers set forth in this Agreement, are agents of the Company for the purpose of the Company's business, and the actions of the officers taken in accordance with such powers shall bind the Company.

7.9 Resignation; Removal. Any officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board. Any officer may be removed as such, either with or without cause, by the Board whenever in its judgment the best interests of the Company shall be served thereby; provided that such removal shall be without prejudice to the contract rights, if any, of the individual so removed. Designation of an officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Board.

7.10 Duties of Officers Generally. Each officer shall owe to the Company and its Members the same duties of care and loyalty that such individuals would owe to a corporation and its stockholders as an officer thereof under the laws of the State of Delaware.

ARTICLE VIII
MEMBERS

8.1 [Intentionally Omitted].

8.2 Membership Status. After a permitted Transfer of Units in accordance with Article XII by a Member, such Member shall not be entitled to any Distributions or payments of any kind from the Company with respect to such Units and shall no longer be considered a Member with respect to such Units for any purposes.

8.3 No Participation in Management. Subject to Section 8.10, the management of the business and affairs of the Company shall be vested in whole in the Board in accordance with Article VI of this Agreement. Except with respect to the execution and filing of the Certificate, as otherwise specifically provided by this Agreement or required by the Act, no Member, acting solely in the capacity of a Member, shall be an agent of the Company or have any authority to act for or bind the Company.

8.4 Meetings. A regular annual meeting of the Members may be held without notice on the second Wednesday in the month of December in each year, beginning with the year 2009, or on such other day as shall be fixed by the Board. If the day fixed for the annual meeting shall be a legal holiday in the State of Delaware, such meeting shall be held on the next succeeding business day. The Board may provide, by resolution fixing the time and place thereof, for the holding of additional regular meetings, which may thereafter be held at the designated time and place, without further notice thereof to the Members. Special meetings of the Members which may be held for any purpose or purposes, may be called by the Chairman of the Board or by the Chief Executive Officer, by the Board, or by Members owning at least fifty percent (50%) of either the outstanding Class A Units or the Class A-1 Units.

8.5 Place of Meetings. The Board or the Member or Members calling such meeting may designate any place in Yolo County, California or such other place as shall be determined by the Board as the place of meeting for any meeting of the Members.

8.6 Notice of Meetings. Written or printed notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered to each Member not less than three (3) nor more than seventy (70) Business Days before the meeting, at the direction of the Person or Persons calling such meeting.

8.7 Spontaneous Meeting of Members. If all of the Members meet at any time and place (including telephonically) and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and any Company action which may be taken at a meeting of the Members may be taken at such meeting.

8.8 Quorum. At each meeting of the Members, the Members holding a majority of all outstanding Class A Units and Class A-1 Units entitled to vote, present in person or by proxy, shall constitute a quorum for the transaction of any business which may be taken at such a meeting. In the absence of a quorum, any Member present at such meeting in person, by proxy or by telephone shall have the power to adjourn such meeting until a quorum shall be constituted.

8.9 Voting Rights Generally. The Members shall have the voting rights associated with the Units held by such Member as provided in this Agreement. When a vote is required by the Members, each Member shall be entitled to vote as provided in Section 3.4 of this Agreement.

8.10 Special Voting Rights of Holders of Class A-1 Units. The vote of the Person or Persons holding a majority of the Class A-1 Units, voting as a class, shall be required to approve:

(a) Any Liquidation Event and any liquidation, merger or sale of substantially all or substantially all of the assets of the Company or any of its subsidiaries;

(b) Any distributions to Members, except for tax distributions pursuant to Section 5.1;

(c) Repurchases or redemptions of any Units by the Company;

(d) The sale or issuance of any Securities that would result in a change in control of the Company;

(e) Any disposition of Company assets having an aggregate value greater than $5 million;

(f) Any acquisition by the Company having a purchase price greater than $10 million;

(g) Incurring Indebtedness or agreeing to furnish a guarantee or other credit support in respect of any Indebtedness, in each case that would cause the outstanding Indebtedness of the Company and its Subsidiaries, taken as a whole, to exceed $70,000,000 on a pro forma basis after giving effect to such incurrence or agreement;

(h) Prior to December 31, 2013, the issuance of any Equity Securities of the Company;

(i) Any related party transaction except for trade contracts between the Company and FMC;

(j) Any change in the Company's independent auditors;

(k) Any change in any significant accounting policy of the Company;

(l) Any change in or amendment to this Agreement;

(m) Any change in the compensation of any Director, the Chairman of the Board or the CEO;

(n) The selection and the terms of employment of any person selected by the Board to serve as CEO; and

(o) The issuance of any security with liquidation rights senior to, or pari passu with, the Class A-1 Units.

8.11 Manner of Acting. Unless otherwise required by the Act or this Agreement, the affirmative vote of a majority of the Units entitled to vote represented at a meeting at which the quorum is present shall constitute the act of the Members. With respect to any matters put to a vote by a separate Class of Units, the affirmative vote of a majority of the Holders of Units of such Class entitled to vote represented at a meeting at which a quorum is present shall constitute the act of such Class.

8.12 Proxies. A Member, at any meeting of Members, may vote either in person or by proxy executed in writing by the Member or by the Member's duly authorized attorney in fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney. The interest with which it is coupled need not be an interest in the Company. Proxies shall be filed with the Secretary of the Company before or at the time of such meeting.

8.13 Written Actions. Any action required to be, or which may be, taken by Members may be taken without a meeting if consented thereto in a writing setting forth the action so taken and signed by the Members entitled to vote who are required to take such action.

8.14 Telephonic Participation in Meetings. Members may participate in any meeting through telephonic or similar communications equipment by which all Persons participating in the meeting can hear one another, and such participation shall constitute presence in person at such meeting.

8.15 Convening Members Meetings. The Chairman of the Board, or in the Chairman of the Board's absence, the Chief Executive Officer, or in the absence of any of the foregoing, any other officer (in the order of seniority in the time served in any one or more officer positions) shall call meetings of Members to order and act as chairman thereof; provided, however, that notwithstanding the foregoing, the Members present may elect the chairman of such meeting from among the Members. The Secretary shall act as secretary of all meetings of Members, but in the absence of the Secretary, or if the Secretary is serving as chairman, the chairman may appoint any person to act as secretary.

8.16 Persons Who May Vote Certain Units. Units standing in the name of another limited liability company, domestic or foreign, may be voted by such member, manager, officer, agent or proxy as the operating agreement or equivalent instrument of such limited liability company may prescribe, or in the absence of a governing provision, as the managers or members vested with management of such limited liability company shall determine. Units standing in the name of a corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of a governing provision, as the board of directors of such corporation may determine.

8.17 Confidentiality. Each Member acknowledges that during the term of this Agreement, the Member may have access to or become acquainted with trade secrets, proprietary information and confidential information belonging to the Company including, but not limited to, information concerning business plans, operating practices and methods, expansion plans, strategic plans, marketing plans, contracts, customer lists or other business documents which the Company treats as confidential (collectively, "Confidential Information"). Each Member agrees to maintain the confidentiality of all proprietary, nonpublic information, documents and materials relating to the business of the Company, any subsidiaries, any of their Affiliates or any Member which such Member now or in the future may possess, except to the extent disclosure of any such information is required by law or authorized by the Company or reasonably occurs in connection with disputes under this Agreement and, except to the extent the information becomes generally available to the public, through no fault of such Member, is released with the Company's written consent or is necessary to perform such Member's obligations under this Agreements. Upon expiration or other termination of a Member's interest in the Company, that Member may not take any of the Confidential Information, and that Member shall promptly return to the Company all Confidential Information in that Member's possession or control.

8.18 Withdrawal. No Member shall have the right to withdraw from the Company at any time without the consent of the Board.

8.19 Acknowledgment Regarding Outside Businesses and Opportunities.

(a) Notwithstanding anything in this Agreement or any other Transaction Document to the contrary, each of the Company and the Members acknowledges and agrees that FMC and its Affiliates (i) have made, prior to the date hereof, and are expected to make, on and after the date hereof, investments (by way of capital contributions, loans or otherwise), and (ii) have engaged, prior to the date hereof, and are expected to engage, on and after the date hereof, in other transactions with and with respect to, in each case, Persons engaged in businesses that directly or indirectly compete with the business of the Company and its Subsidiaries as conducted from time to time. Except as otherwise expressly set forth in Section 8.19(b), the Company and the Members agree that any involvement, engagement or participation of FMC and its Affiliates (including any FMC Director) in such investments, transactions and businesses, even if competitive with the Company, shall not be deemed wrongful or improper or to violate any duty express or implied under applicable Law.

(b) The Company and each Member hereby renounce any interest or expectancy in any business opportunity, transaction or other matter in which FMC and its Affiliates (other than the Company and its subsidiaries) participates or desires or seeks to participate and that involves any aspect of the oil and gas industry or any other industry or business (each, a "Business Opportunity") other than a Business Opportunity that (i) is presented to an FMC Director solely in such individual's capacity as an FMC Director (whether at a meeting of the Board or otherwise) and with respect to which none of FMC or any of its Affiliates (other than the Company and its subsidiaries) has independently received notice or is otherwise pursuing or aware of such Business Opportunity or (ii) is identified to an FMC Director solely through the disclosure of information by or on behalf of the Company to such FMC Director and with respect to which none of FMC or any of its Affiliates (other than the Company and its subsidiaries) has independently received notice or is otherwise pursuing or aware of such Business Opportunity (each Business Opportunity other than those referred to in clauses (i) or (ii) of this section are referred to as a "Renounced Business Opportunity"). None of either FMC or any of its Affiliates (including any FMC Director) shall have any obligation to communicate or offer any Renounced Business Opportunity to the Company, and FMC and any of its Affiliates may pursue for itself, or direct, sell, assign or transfer to a Person other than the Company, any Renounced Business Opportunity.

(c) Each of the Company and the Members hereby agrees that any claims against, actions, rights to sue, other remedies or other recourse to or against FMC and its Affiliates (including any FMC Director) for or in connection with any such investment activity or other transaction activity or other matters described in Section 8.19(a) or (b), whether arising in common law or equity or created by rule of law, statute, constitution, contract (including this Agreement or any other Transaction Document) or otherwise, are expressly released and waived by the Company and each Member, in each case to the fullest extent permitted by Law; *provided, however,* that this Section 8.19(c) does not release or waive any claim by the Company or any Member with respect to matters described in clauses (i) and (ii) of Section 8.19(b).

(d) Notwithstanding anything in this Agreement or any other Transaction Document to the contrary, each of the Company and the Members acknowledges and agrees that FMC and its Affiliates (including the FMC Directors) have obtained, prior to the date hereof, and are expected to obtain, on and after the date hereof, confidential information from other companies in connection with the activities and transactions described in Section 8.19(a) or otherwise. Each of the Company and the Members hereby agrees that (i) none of FMC or any of its Affiliates (including the FMC Directors) has any obligation to use in connection with the business, operations, management or other activities of the Company or to furnish to the Company or any Member any such confidential information, and (ii) that any claims against, actions, rights to sue, other remedies or other recourse to or against FMC or any of its Affiliates (including the FMC Directors) for or in connection with any such failure to use or to furnish such confidential information, whether arising in common law or equity or created by rule of law, statute, constitution, contract (including this Agreement or any other Transaction Document) or otherwise, are expressly released and waived by the Company and each Member, to the fullest extent permitted by Law.

(e) Notwithstanding anything in this Agreement or any other Transaction Document to the contrary, FMC acknowledges and agrees that FMC and its Affiliates (including the FMC Directors) have obtained, prior to the date hereof, and are expected to obtain, on and after the date hereof, Confidential Information from the Company. FMC hereby agrees that none of FMC or any of its Affiliates (including the FMC Directors) will use in connection with the business, operations, management or other activities of FMC or any of its Affiliates (including the FMC Directors) or any of its investment opportunities, or furnish to any Person associated with other companies encountered by FMC in connection with the activities and transactions described in Section 8.19(a) or otherwise, any such Company Confidential Information, except pursuant to Section 8.17.

ARTICLE IX
EXCULPATION AND INDEMNIFICATION

9.1 Exculpation. No Covered Person shall be liable to the Company or to any officer or Member for any loss suffered by the Company unless such loss is caused by such Covered Person's gross negligence, willful misconduct, intentional violation of law or material breach of this Agreement. No Covered Person shall be liable for errors in judgment or for any acts or omissions that do not constitute gross negligence, intentional misconduct, knowing violation of law or material breach of this Agreement. Any Covered Person acting for, on behalf of, or in relation to, the Company in respect of any transaction, any investment or any business decision or action, or otherwise, may consult with counsel and accountants in respect of Company affairs, and provided such Covered Person acts in good faith reliance upon the advice or opinion of such counsel or accountants, such Covered Person shall not be liable for any loss suffered by the Company in reliance thereon.

9.2 Right to Indemnification. Subject to the limitations and conditions as provided in this Article IX, each Covered Person (regardless of such person's capacity and regardless of whether another Covered Person is entitled to indemnification) who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative (hereinafter, a "Proceeding"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, in each case in connection with the activities of the Company or its Subsidiaries shall be indemnified by the Company to the fullest extent permitted under applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said law permitted the Company to provide prior to such amendment) against judgments, penalties, fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such Covered Person in connection with such Proceeding; provided that (a) such Covered Person's course of conduct was pursued in good faith and believed by him to be in the best interests of the Company and (b) such course of conduct did not constitute gross negligence, intentional misconduct, or knowing violation of law on the part of such Covered Person and otherwise was materially in accordance with the terms of this Agreement. Indemnification under this Article IX shall continue with respect to a Covered Person who has ceased to serve in the capacity which initially entitled such Covered Person to indemnity hereunder. The rights granted pursuant to this Article IX shall be deemed contractual rights, and no amendment, modification or repeal of this Article IX shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article IX could involve indemnification for negligence. Notwithstanding the foregoing, no indemnification pursuant to this Section 9.2 shall be available to any Covered Person with respect to its obligations incurred pursuant to any agreement other than this Agreement, including without limitation the other Transaction Documents, or with respect to any actions taken by any such Person if such Person was acting on behalf of itself or was not solely acting in the capacity that gave rise to its status as a Covered Person.

9.3 Advance Payment. The right to indemnification conferred in this Article IX shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Covered Person of the type entitled to be indemnified under Section 9.2 who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Covered Person's ultimate entitlement to indemnification; provided that the payment of such expenses incurred by any such Covered Person in advance of the final disposition of a Proceeding shall be made only with the approval of the Board and upon delivery to the Company of a written affirmation by such Covered Person of the Covered Person's good faith belief that the Covered Person has met the standard of conduct necessary for indemnification under Article IX and a written undertaking, by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Covered Person is not entitled to be indemnified under this Article IX or otherwise.

9.4 Indemnification of Employees and Agents. The Company may indemnify and advance expenses to any Person, as determined by the Board, by reason of the fact that such Person was an employee or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another Entity, foreign or domestic, or other enterprise against any liability asserted against the Person and incurred by the Person in such a capacity or arising out of the Person's status as such a Person to the same extent that the Company shall indemnify and advance expenses to Directors and officers under this Article IX.

9.5 Appearance as a Witness. Notwithstanding any other provision of this Article IX, the Company may pay or reimburse reasonable out-of-pocket expenses incurred by a Director, officer or employee in connection with such Person's appearance as a witness or other participation in a Proceeding related to or arising out of the business of the Company at a time when the Person is not a named defendant or respondent in the Proceeding.

9.6 Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article IX shall not be exclusive of any other right which a Director, officer or other Person indemnified pursuant to this Article IX may have or hereafter acquire under any law (common or statutory), provision of the Certificate or this Agreement, separate contractual arrangement, vote of the Holders of a majority of the Class A Units and Class A-1 Units or a majority of the Directors or otherwise.

9.7 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is or was serving as a Director, officer, employee or agent of the Company or is or was serving at the request of the Company as a manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another Entity, foreign or domestic, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article IX.

9.8 Savings Clause. If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Director, officer or any other Person indemnified pursuant to this Article IX as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the fullest extent permitted by any applicable portion of this Article IX that shall not have been invalidated and to the fullest extent permitted by applicable law.

9.9 Transactions Between the Company and the Members. Notwithstanding that it may constitute a conflict of interest and subject to Section 8.19, the Members or their Affiliates may engage in any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or rendering of any service or the establishment of any salary, other compensation or other terms of employment) with the Company so long as such transaction is approved in advance by a majority of the disinterested Directors on the Board.

ARTICLE X
TAXES

10.1 Tax Returns. The Board shall cause to be prepared and filed all necessary federal, state, local or foreign income tax returns for the Company, including making any tax elections the Board may deem appropriate and in the best interests of the Company. Each Member shall furnish to the Board all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed in accordance with applicable law.

10.2 Tax Matters Partner. The Board shall designate a Member as, and have the power to replace at any time, the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code. The initial tax matters partner designated by the Board is Schilling Robotics, Inc. Any Member who is designated "tax matters partner" (a) shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code, (b) shall inform each other Member of all significant matters that may come to its attention in its capacity as "tax matters partner" by giving notice thereof on or before the fifth (5th) Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications the tax matters partner may receive in that capacity and (c) may not take any action contemplated by Sections 6222 through

6232 of the Code without the consent of the Board. The preceding sentence does not authorize any Member acting as tax matters Partner (or any other Member) to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Code.

10.3 Certain Tax Matters. Notwithstanding anything contained in this Agreement to the contrary (other than Section 5.5(b)), (i) except as otherwise provided herein, all tax elections and allocations must be approved by a majority of the Board; provided that no elections shall be made to treat the Company as anything other than a partnership for U.S. federal, state or local income tax purposes; (ii) unless otherwise agreed to by the FMC Director, the Company shall elect to use the remedial method of allocation pursuant to Treas. Reg. § 1.704-3; and (iii) the Company shall make the election provided for in Section 754 of the Code effective for the period that includes the Effective Date.

ARTICLE XI
BOOKS, REPORTS AND COMPANY FUNDS

11.1 Maintenance of Books. Except as may be required to compute Capital Accounts under this Agreement, the Company shall keep appropriate books and records of accounts in accordance with the method used by the Company under the Code and also in accordance with generally accepted accounting principles (GAAP) and shall keep appropriate minutes of the proceedings of its Members, the Board and its committees.

11.2 Reports.

(a) The Company shall deliver to each Director periodic financial statements, annual audited financial statements, and annual budgets and other financial reports requested by the Board.

(b) The Company shall deliver:

(i) to the Holders of Units, no later than 75 days after the end of the Company's Fiscal Year, an audited balance sheet as of the end of such Fiscal Year and audited statements of income and cash flows for such Fiscal Year, such year-end financial reports to be in reasonable detail and prepared in accordance with GAAP, and

(ii) to each Holder of at least 5 Class A-1 Units, (A) no later than 45 days after the end of each calendar quarter, an unaudited balance sheet as of the end of each such quarterly period, and unaudited statements of income and cash flows for such period, all in reasonable detail and prepared in accordance with GAAP, except that they may not contain all of the footnotes that are required by GAAP, and are subject to changes resulting from year-end audit adjustments and (B) within 30 days following the beginning of each fiscal year, a budget and business plan for such fiscal year, prepared on a monthly basis, including balance sheets, income statements and statements of cash flows for such months, and as soon as prepared, any other budgets or revised budgets prepared by the Company.

This Section 11.2(b) shall terminate and be of no further force and effect (x) immediately prior to the closing of the Company's (or a successor Entity's) first Qualified Public Offering, (y) if and when the Company shall become subject to the periodic reporting requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or (z) a Liquidation Event.

(c) The Company shall use reasonable efforts to deliver or cause to be delivered, within 90 days after the end of each Fiscal Year, to each Person who was a Member at any time during such Fiscal Year all information necessary for the preparation of such Person's U.S. federal and state income tax returns.

11.3 Unit Register. The Secretary shall maintain a register of all of the Members, setting forth next to the name of each the type and number of Units owned by such Member, and a register of the owners of any rights (including warrant and conversion rights, if any) for Units. Such registers shall be maintained at the Company's principal place of business, and each Director, Member or such Person's duly authorized representative shall have the right to inspect and copy such registers upon reasonable notice, at all reasonable times during business hours.

11.4 Company Funds. Pending use in the business of the Company or distribution to the Members, the funds of the Company may, in the discretion of the Board, be deposited in a bank account or accounts, or invested in the following interest-bearing taxable or nontaxable investments: checking and savings accounts, certificates of deposit and time or demand deposits in commercial banks, U.S. government securities, securities fully guaranteed by U.S. government agencies, bankers' acceptances, securities issued by money market mutual funds, savings and loan association deposits, deposits in members of the Federal Home Loan Bank System, or commercial paper, rated A-I or better by Standard & Poor's Corporation or Prime-I or better by Moody's Commercial Paper Division of Moody's Investor Services, Inc., or the successor to either of them; provided that the Board shall not make any such deposits or investments that would require registration of the Company under the Investment Company Act of 1940. Such funds shall not be commingled with funds of any other Person. Withdrawal of funds shall be made upon such signatures as the Board may designate.

ARTICLE XII
EQUITY HOLDER RIGHTS AND RESTRICTIONS ON TRANSFER

12.1 Transfers Restricted. No Member may Transfer any of its Membership Interest without the consent of the remaining Members. The foregoing restriction shall not apply to (a) the transfer by Newco LLC of its Membership Interest to Inc. pursuant to the Securities Purchase Agreement, (b) any transaction giving rise to a Bring Along Right or Tag Along Right pursuant to the Unitholders Agreement and (c) any pledge, mortgage, hypothecation or grant of a security interest in connection with a credit agreement or other secured financing entered into by a Member.

12.2 Transfer by Member. In addition to the requirements set forth elsewhere in this Article XII, no Transfer by a Member of all or part of its Membership Interest, pursuant to Section 12.1, whether or not for value, shall be effective unless: (i) such Transfer is made in form reasonably satisfactory to the Board; and (ii) the transferor, transferee, and (if necessary) other Members have executed all such certificates and other documents and performed all such acts as the Board deems reasonably necessary to effect a valid transfer and to preserve the rights, status and existence of the Company.

12.3 Void Transfers. Any Transfer by any Member of any Membership Interest or other interest in the Company in violation of this Agreement (including, without limitation, the failure of the transferee to execute a counterpart to this Agreement) or which would cause the Company to not be treated as a partnership for U.S. federal income tax purposes shall be void and ineffective and shall not bind or be recognized by the Company or any other party. No purported assignee shall have any right to vote on any matter or any right to any profits, losses or Distribution, receive reports or other information or to inspect the records, of the Company.

ARTICLE XIII
DISSOLUTION, LIQUIDATION AND TERMINATION

13.1 Dissolution. The Company shall be dissolved and its affairs shall be wound upon the first to occur of the following:

(a) The affirmative vote of a majority of the Directors and the affirmative vote of a majority of the outstanding Class A and a majority of the outstanding Class A-1 Units, voting as separate classes;

(b) The incorporation of the Company pursuant to Article XIV;

(c) The occurrence of a Liquidation Event; or

(d) The entry of a decree of judicial dissolution of the Company under the Act.

The death, retirement, resignation, expulsion, withdrawal, bankruptcy or dissolution of any Member shall not cause a dissolution of the Company and thereafter the Company shall continue its existence.

13.2 Liquidation and Termination.

(a) On dissolution of the Company, the Directors shall appoint a Person or Persons to act as liquidator(s). The liquidator(s) shall proceed diligently to wind up the affairs of the Company and make final Distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. Until final Distribution, the liquidator(s) shall continue to operate the Company properties with all of the power and authority of the Members. The steps to be accomplished by the liquidator(s) are as follows:

(i) as promptly as possible after dissolution and again after final liquidation, the liquidator(s) shall cause a proper accounting to be made by one of the five largest accounting firms in the United States (or such other independent accounting firm approved by the Board) of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(ii) the liquidator(s) shall cause the notice described in the Act to be mailed to each known creditor of and claimant against the Company in the manner described thereunder;

(iii) the liquidator(s) shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company (including, without limitation, all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidator(s) may reasonably determine); and

(iv) all remaining assets of the Company shall be sold and the cash proceeds therefrom shall be distributed to the Members as follows:

(A) First, to the Class A-1 Unit Holders based on their respective Class A-1 Units until the aggregate amount distributed pursuant to this Section 13.2(a)(iv)(A) equals the Class A-1 Unit Liquidation Preference;

(B) Next, to the Class A Unit Holders based on their respective Class A Units an amount equal to the aggregate of the FMC Liquidation Preference, the Inc. Liquidation Preference and the Newco LLC Liquidation Preference until FMC has received the FMC Liquidation Preference, Inc. has received the Inc. Liquidation Preference and Newco LLC has received the Newco LLC Liquidation Preference pursuant to this Section 13.2(a)(iv)(B), *provided* that in the event the amount available for distribution hereunder is less than such aggregate amount, pro rata among the Class A Unit Holders based on their respective Class A Units; and

(C) The remainder, pro rata among Class A-1 Unit Holders and Class A Unit Holders , based on their respective Units held.

(b) All Distributions to the Members under this Section 13.2 shall be made, as determined by the Board, in cash and/or Securities, and such Distribution of cash and/or Securities to a Member in accordance with the provisions of this Section 13.2 shall constitute a complete return to the Member of its Capital Contributions and a complete Distribution to the Member of the Member's interest in the Company and all of the Company's property and constitutes a compromise to which all Members have consented within the meaning of the Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

13.3 Cancellation of Certificate. On completion of the Distribution of Company assets as provided above, the Company shall be deemed to have terminated and the liquidator(s) (or such other Person or Persons as the Act may require or permit) shall file a certificate of cancellation and such other documentation with the Secretary of State of Delaware as may be necessary to terminate the Company, cancel any other filings made pursuant to Section 2.5 and take such other actions as may be necessary to terminate the Company.

ARTICLE XIV
SECTION 351 TRANSACTION

14.1 Incorporation. Upon either:

(a) Upon either:

(i) The approval of the Board of a plan to incorporate the Company (the "Incorporation Plan"), provided that prior to December 31, 2013, approval of the Holders of a majority of the Class A-1 Units shall also be required, or

(ii) The approval of an Incorporation Plan by the Holders of a majority of the Class A Units, provided that prior to December 31, 2013, approval of the holders of a majority of the Class A-1 Units shall also be required,

each Member will transfer such Member's Units to a corporation specifically formed for such purpose (the "Corporation") in exchange for stock of the Corporation in a transaction intended to qualify under Section 351 of the Code, (the "Section 351 Transaction"). In the Section 351 Transaction, the Corporation shall issue its stock to the Members in accordance with their respective Units, without regard to class. Each Member shall consent to and raise no objections against, and shall take all necessary and desirable actions in connection with the consummation of the Section 351 Transaction. In the case of a Member that is a corporation, the Member may, in lieu of transferring all of its Units to the Corporation, cause all of its shareholders to transfer all of their shares of stock in the Member to the Corporation.

(b) In the event that the Company is incorporated pursuant to this Section 14.1 but does not effect a Qualified Public Offering immediately thereafter, then the respective rights, preferences, privileges and restrictions of the Class A Unit and the Class A-1 Units as they substantially exist under this Agreement and the Unitholders Agreement shall continue and be in effect in such successor corporation. Further, the Members of the Company, who shall become stockholders of such successor corporation that does not effect a Qualified Public Offering immediately after such incorporation, hereby agree and acknowledge that they shall, upon such incorporation of the Company, enter into a stockholder agreement containing substantially the same rights, preferences, privileges and restrictions with respect to voting as exist in this Agreement and the Unitholders Agreement.

14.2 Expenses and Other Matters. The Company shall pay any and all organizational, legal and accounting expenses and filing fees incurred in connection with the Section 351 Transaction (including, without limitation, any fees related to a filing under the Hart-Scott-Rodino Anti-Trust Improvements Act of 1976, as amended). The Corporation shall issue its stock in the Section 351 Transaction in accordance with the Incorporation Plan, which shall specify the classes of stock for which the Units (or shares of stock of a Member that is a corporation, as applicable) shall be exchanged and which shall attach as an exhibit the form of organizational document which shall set forth the rights and privileges of such classes of stock. In addition, the Incorporation Plan shall attach as exhibits such other documents and agreements as the Board determines shall be necessary, if any, to confer the rights, privileges, preferences and obligations conferred on the holders of Units in this Agreement on the holders of such classes or series of stock which shall be issued in exchange for such Units.

ARTICLE XV
GENERAL PROVISIONS

15.1 Notices. Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid, and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by reputable overnight courier, or by facsimile transmission; and a notice, request, or consent given under this Agreement is effective on receipt by the Person to whom it was sent. All notices, requests and consents to be sent to a Member must be sent to or made at the address given for that Member on the books and records of the Company, or such other address as that Member may specify by notice to the other Members. Any notice, request, or consent to the Company or the Board must be given to the Board at the following address:

Schilling Robotics, LLC
201 Cousteau Place
Davis, California 95618-5412
Attention: Chairman
Facsimile: (530) 753-8092

Whenever any notice is required to be given by law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

15.2 Entire Agreement. This Agreement and the Securities Purchase Agreement constitute the entire agreement of the Members and their Affiliates relating to the Company and supersede all prior contracts or agreements with respect to the Company, whether oral or written.

15.3 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute of limitations period has run.

15.4 Amendment, Modification or Waiver. Except as otherwise expressly provided herein, this Agreement may be amended, modified or waived from time to time only by a written instrument executed and agreed to by the Members holding a majority of the Class A-1 Units and the Members holding a majority of the Class A Units then outstanding, voting as separate classes; provided, however, that the Board may amend and modify the provisions of this Agreement and the books and records of the Company to the extent necessary to reflect the issuance of new Units or other interests in the Company as permitted in accordance with this Agreement and to comply with applicable law.

15.5 Binding Effect. Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors and assigns.

15.6 Governing Law; Severability. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement, and all issues and questions concerning the relative rights of the Company and its Members, shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law, rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances are not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

15.7 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and the transactions contemplated hereby.

15.8 Waiver of Certain Rights. Each Member irrevocably waives any right such Member may have to (a) demand any Distributions (other than, before such Member has resigned or withdrawn from the Company, Distributions required pursuant to Section 5.1 and 13.2 hereof) or withdrawal of property from the Company (whether upon resignation, withdrawal or otherwise) or (b) maintain any action for dissolution of the Company or for partition of the property of the Company except upon dissolution of the Company pursuant to Article XIII hereof.

15.9 Indemnification and Reimbursement for Payments on behalf of a Member. If the Company is obligated under applicable law to pay any amount to a governmental agency because of a Member's status as a member of the Company or for federal or state withholding taxes on payments made to a Member, other than due to the Company's actions or inactions, then such Member (the "Indemnifying Member") shall indemnify the Company in full for the entire amount paid (including, without limitation, any interest, penalties and expenses associated with such payments). The amount to be indemnified shall be charged against the Capital Account of the Indemnifying Member and, at the option of the Board, either:

(a) promptly upon notification of an obligation to indemnify the Company, the Indemnifying Member shall make a cash payment to the Company equal to the full amount to be indemnified (and the amount paid shall be added to the Indemnifying Member's Capital Account but shall not be treated as a Capital Contribution), or

(b) the Company shall reduce Distributions which would otherwise be made to the Indemnifying Member, until the Company has recovered the amount to be indemnified (and, notwithstanding Section 4.1, the amount withheld shall not be treated as a Capital Contribution).

15.10 Notice to Members of Provisions. By executing this Agreement, each Member acknowledges that it has actual notice of (a) all of the provisions hereof (including, without limitation, the restrictions on transfer set forth in Article XII) and (b) all of the provisions of the Certificate.

15.11 Counterparts. This Agreement may be executed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

15.12 Dispute Resolution.

(a) In the event of any dispute or disagreement among any of the Parties as to the interpretation of any provision of this Agreement or the performance of obligations hereunder, after good faith negotiation by the Parties, any Party may, by written notice to the other Parties, demand arbitration of the matter, and such arbitration shall be administered by the Center for Public Resources Institute for Dispute Resolutions ("CPR") in accordance with its then prevailing Rules for Non-Administered Arbitration of Business Disputes, by an arbitrator or arbitrators as selected and described in Section 15.12(b). The arbitrator(s) shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrators, to discover relevant information from the opposing Parties about the subject matter of the dispute. The arbitrator(s) shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including, without limitation, attorneys' fees and costs, to the same extent as a court of competent jurisdiction, should the arbitrator(s) determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator(s) shall be written, shall be in accordance with applicable law, including, without limitation, the United States Arbitration Act, 9 U.S.C. §1 *et. seq.* (the "USAA"), and with this Agreement, and shall be supported by written findings of fact and conclusions of law which shall set forth the basis for such decision. The decision of the arbitrator(s) shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction, and the Parties shall be entitled to act in accordance with such decision.

(b) For all disputes for which the aggregate disputed dollar amount is equal to or less than $3,000,000, the Parties shall agree upon a single arbitrator to oversee such dispute. If the Parties cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the dispute shall be managed by a single independent arbitrator to be chosen by the CPR. For all disputes for which the aggregate disputed dollar amount exceeds $3,000,000, such dispute shall be managed and ruled upon by a panel of three arbitrators. FMC, on the one hand, and the Schilling Parties, on the other hand, shall each name one of the arbitrators, and the third arbitrator shall be chosen by FMC and the Schilling Parties or, if FMC and the Schilling Parties cannot agree on such arbitrator within 20 days after submitting the dispute for arbitration, then the third arbitrator shall be an independent arbitrator selected by the CPR.

(c) Any arbitration under this Section 15.12 shall be governed by the USAA and shall be held in Delaware. The non-prevailing Party to an arbitration shall pay its own expenses, the fees of the arbitrator, any fees and expenses of the CPR, and the expenses, including attorneys' fees and costs, reasonably incurred by the other Party to the arbitration.

15.13 Waiver of Jury Trial. The Members waive their respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement or any dealings between them relating to the subject matter of this Agreement and the relationship that is being established. The Members also waive any bond or surety or security upon such bond which might, but for this waiver, be required of any of the other parties. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims. The Members acknowledge that this waiver is a material inducement to enter into a business relationship, that each has already relied on their waiver in entering into this Agreement and that each will continue to rely on the waiver in their related future dealings. The Members further warrant and represent that each has reviewed this waiver with its or his, as the case may be, legal counsel, and that each knowingly and voluntarily waives its or his, as the case may be, jury trial rights following consultation with legal counsel. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and the waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Agreement or to any other documents or agreements relating to the transaction contemplated hereby. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

15.14 Parties in Interest. Except as expressly provided in the Act, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the Members and their respective successors and assigns nor shall anything in this Agreement relieve or discharge the obligation or liability of any other Person to any party to this Agreement, nor shall any provision give any other Person any right of subrogation or action over or against any party to this Agreement.

ARTICLE XVI
POWER OF ATTORNEY

Each Member irrevocably constitutes and appoints any Person who is the Chief Executive Officer of the Company, for so long as the Person shall remain as such Chief Executive Officer, as the true and lawful attorney-in-fact of such Member with full power and authority in the name, place and stead of such Member to do any or all of the following:

(A) To execute, record and file all documents and instruments including an amendment of this Agreement, which may be necessary to provide for any or all of carrying out the Incorporation Plan, accomplishing the admission of any Person as a Member pursuant to this Agreement and any admission described or provided for in any or all of Sections 3.5, 4.2 and Section 4.3;

(B) To execute any amendment to this Agreement approved in accordance with the terms of this Agreement;

(C) To document any Transfer permitted under this Agreement; and

(D) To document the incorporation of the Company pursuant to Section XIV.

The foregoing power of attorney is coupled with an interest, shall be irrevocable, and shall survive the transfer by any Member of the whole or any portion of such Member's Membership Interest. This power of attorney shall not be affected by the disability of the Member.

(Signature Pages Follow)

SCHILLING ROBOTICS, LLC

COUNTERPART SIGNATURE PAGE TO
AMENDED AND RESTATED OPERATING AGREEMENT

Reference is made to that certain Amended and Restated Operating Agreement of Schilling Robotics, LLC (the "Company") dated as of , a copy of which is attached hereto (as amended and in effect from time to time, the "Operating Agreement"). Capitalized terms used herein without definition shall have the respective meanings ascribed thereto in the Operating Agreement.

The undersigned, hereby agrees that, the undersigned is a Holder of Units of the Company, as set forth below, and is entitled to all of the benefits under, and is subject to all of the obligations, restrictions and limitations set forth in, the Operating Agreement that are applicable to the Holders of the same Class (or Classes) of Units that I hold. This Counterpart Signature Page shall take effect and shall become a part of the Operating Agreement immediately upon the signature of the undersigned as a Holder of Units of the Company.

Executed as of the date set forth below under the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other state.

ENTITY MEMBER:

____
Name of Member (Print)

By: ______________________________
Name:
Title:

Number of Units

Class A ______________________________
Class A-1 ______________________________

Address:

____
____
____

Schedule A

Board of Directors

Tyler Schilling, Chairman	(Director elected by Holders of Class A Units)
Philip Otto	(Director elected by Holders of Class A Units)
Hobart McK. Birmingham	(Director elected by Holders of Class A Units)
J. Taft Symonds	(Director elected by Holders of Class A Units)
John T. Gremp	(Director elected by Holders of Class A-1 Units)
William H. Schumann, III	(Director elected by Holders of Class A-1 Units)

Schedule B

Officers

Tyler Schilling, Chairman, Chief Development Officer and Secretary

Philip Otto, President and Chief Executive Officer

Wes Gerriets, Senior Vice President, Manipulator Sales

John Kehoe, Senior Vice President and Chief Financial Officer

Paul Whalen, Senior Vice President, Operations

Jason Stanley, Vice President, Global Sales

Steve Callori, Vice President, Engineering

Randy Dusseau, Vice President, Manipulator Manufacturing

Mike Gyorfi, Vice President, Systems Manufacturing

Clay Cottingham, Vice President, Customer Service

Gil Llacuna, Vice President and Corporate Controller

Sally Larocca, Vice President, Human Resources

George Shirreffs, Managing Director, Schilling Robotics Ltd, North Sea Operations

Schedule C

Competitors/Customers

Triton Group or its member companies

- Perry Slingsby Systems
- Sub Atlantic
- Etc.

Soil Machine Dynamics
International Submarine Engineering
Kyst Design
Eastar
Kraft Telerobotics
Hydro-Lek
Oceaneering
Saipem
Subsea 7 (Siem Offshore)
Fugro
Bourbon Offshore
Edison Chouest Offshore
Acergy
Allseas
Expro Group
Schlumberger

Exhibit A

Form of Indemnification Agreement

Exhibit 21.1

SIGNIFICANT SUBSIDIARIES OF THE REGISTRANT
December 31, 2008

Company(1)	Organized Under Laws of	Percent of Voting Securities Owned(2)
CDS Engineering BV	The Netherlands	100%
FMC Kongsberg Holding AS	Norway	100%
FMC Kongsberg International A.G.	Switzerland	100%
FMC Kongsberg Services Limited	England	100%
FMC Kongsberg Subsea AS	Norway	100%
FMC Production Services AS	Norway	100%
FMC Subsea Service, Inc.	Delaware	100%
FMC Technologies A.G.	Switzerland	100%
FMC Technologies AS	Norway	100%
FMC Technologies Australia Ltd.	Australia	100%
FMC Technologies B.V.	The Netherlands	100%
FMC Technologies Company	Canada	100%
FMC Technologies C.V.	The Netherlands	100%
FMC Technologies de Mexico, S.A. de C.V.	Mexico	100%
FMC Technologies do Brasil Ltda.	Brazil	100%
FMC Technologies Limited	England	100%
FMC Technologies Measurement Solutions, Inc.	Delaware	100%
FMC Technologies S.A.	France	100%
FMC Technologies Singapore Pte. Ltd.	Singapore	100%
FMC Technologies Pty Ltd.	South Africa	100%
FMC Wellhead Equipment Sdn. Bhd.	Malaysia	100%
PT FMC Santana Petroleum Equipment Indonesia	Indonesia	60%
Smith Meter G.m.b.H.	Germany	100%
Smith Meter Holding Ltd.	Delaware	100%

(1) The names of various active and inactive subsidiaries have been omitted. Such subsidiaries, considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary. The Company is also a minority owner of certain other affiliates. These entities are not subject to inclusion in the determination of the Company's significant subsidiaries.

(2) Percentages shown for indirect subsidiaries reflect the percentage of voting securities owned by the parent as of December 31, 2008.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
FMC Technologies, Inc.:

We consent to the incorporation by reference in the registration statements (Nos. 333-62996, 333-76210, 333-762114, and 333-76216) on Form S-8 of FMC Technologies, Inc. of our reports dated February 27, 2009, with respect to the consolidated balance sheets of FMC Technologies, Inc. and subsidiaries (the Company) as of December 31, 2008 and 2007, and the related consolidated statements of income, cash flows, and changes in stockholders' equity for each of the years in the three-year period ended December 31, 2008, and all related financial statement schedule, and the effectiveness of internal control over financial reporting as of December 31, 2008, which reports appear in the December 31, 2008 annual report on Form 10-K of FMC Technologies, Inc.

Our report on the consolidated financial statements dated February 27, 2009 refers to the Company's adoption of Statement of Financial Accounting Standards No. 158, *Employer's Accounting for Defined Benefit Pension and Other Postretirement Plans—an Amendment of FASB Statements No. 87, 88, and 132R,* which changed the method of accounting for pension and postretirement benefits as of December 31, 2006.

/s/ KPMG LLP

Houston, Texas
February 27, 2009

Exhibit 31.1

CHIEF EXECUTIVE OFFICER CERTIFICATION

I, Peter D. Kinnear, certify that:

1. I have reviewed this annual report on Form 10-K of FMC Technologies, Inc. (the "registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 27, 2009

/S/ PETER D. KINNEAR

Peter D. Kinnear
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CHIEF FINANCIAL OFFICER CERTIFICATION

I, William H. Schumann, III, certify that:

1. I have reviewed this annual report on Form 10-K of FMC Technologies, Inc. (the "registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 27, 2009

/S/ WILLIAM H. SCHUMANN, III

William H. Schumann, III
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

Certification
of
Chief Executive Officer
Pursuant to 18 U.S.C. 1350
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

I, Peter D. Kinnear, Chairman, President and Chief Executive Officer of FMC Technologies, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(a) the Annual Report on Form 10-K of the Company for the year ended December 31, 2008, as filed with the Securities and Exchange Commission (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 27, 2009

/S/ PETER D. KINNEAR

Peter D. Kinnear
Chairman, President and Chief Executive Officer
(Principal Executive Officer)

Exhibit 32.2

Certification
of
Chief Financial Officer
Pursuant to 18 U.S.C. 1350
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

I, William H. Schumann, III, Executive Vice President and Chief Financial Officer of FMC Technologies, Inc. (the "Company"), do hereby certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(a) the Annual Report on Form 10-K of the Company for the year ended December 31, 2008, as filed with the Securities and Exchange Commission (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 27, 2009

/S/ WILLIAM H. SCHUMANN, III

William H. Schumann, III
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)