FORM 8-K

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AVIRON

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Mailing Address
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MOUNTAIN VIEW CA 94043

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6509196500

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D. C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report: February 1, 2001
Date of earliest event reported: February 1, 2001

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

DELAWARE
(State or other jurisdiction of incorporation)

<TABLE>
<S> <C>
0-20815 77-0309686
(Commission File No.) (IRS Employer Identification No.)
</TABLE>

297 N. BERNARDO AVENUE
MOUNTAIN VIEW CALIFORNIA 94043
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (650) 919-6500

ITEM 5. OTHER EVENTS.

The exhibits listed in Item 7 below are filed herewith in connection with Aviron's Registration Statement on Form S-3 (Registration No. 333-52028) and hereby incorporated by reference.

ITEM 7. EXHIBITS.

Exhibit 1.1 Form of Common Stock Underwriting Agreement.

Exhibit 1.2 Form of Debt Underwriting Agreement.

Exhibit 4.1 Form of Officer's Certificate pursuant to Section 2.01 of the Subordinated Indenture.

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SIGNATURE

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

AVIRON

Dated: February 1, 2000

By: /s/ CHARLENE A. FRIEDMAN

Charlene A. Friedman
Vice President, General Counsel
and Secretary

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EXHIBIT 1.1

FORM OF COMMON STOCK UNDERWRITING AGREEMENT

4,000,000 SHARES

AVIRON

COMMON STOCK (PAR VALUE $0.001 PER SHARE)

UNDERWRITING AGREEMENT

February 1, 2001

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February 1, 2001

Morgan Stanley & Co. Incorporated
J.P. Morgan Securities Inc.
SG Cowen Securities Corporation
c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Dear Sirs and Mesdames:

AVIRON, a Delaware corporation (the "COMPANY"), proposes to issue and sell to the several Underwriters named in Schedule I hereto (the "UNDERWRITERS") 4,000,000 shares of its common stock, par value $0.001 per share (the "FIRM SHARES"). The Company also proposes to issue and sell to the several Underwriters not more than an additional 400,000 shares of its common stock, par

value $0.001 per share (the "ADDITIONAL COMPANY SHARES"), and certain shareholders of the Company named in Schedule II hereto (the "SELLING SHAREHOLDERS") severally propose to sell to the several Underwriters not more than an aggregate of 200,000 shares of the common stock of the Company, par value $0.001 per share (the "SELLING SHAREHOLDER SHARES" and, together with the Additional Company Shares, the "ADDITIONAL SHARES"), each Selling Shareholder selling the amount set forth opposite such Selling Shareholder's name in Schedule II hereto, if and to the extent that you, as managers of the offering, shall have determined to exercise, on behalf of the Underwriters, the right to purchase such Additional Shares granted to the Underwriters in Section 3 hereof. The Firm Shares and the Additional Shares are hereinafter collectively referred to as the "Shares." The shares of common stock, par value $0.001 per share, of the Company to be outstanding after giving effect to the sales contemplated hereby are hereinafter referred to as the "COMMON STOCK." The Company and the Selling Shareholders are hereinafter sometimes collectively referred to as the "SELLERS."

The Company has filed with the Securities and Exchange Commission (the "COMMISSION") a registration statement, including a prospectus, relating to the Firm Shares, the Additional Company Shares and its debt securities. The term "REGISTRATION STATEMENT" means such registration statement, including the exhibits thereto, as amended to the date of this Agreement. The term "BASE PROSPECTUS" means the prospectus included in the Registration Statement. If the Company has filed or files an abbreviated registration statement to register additional shares of common stock or debt securities pursuant to Rule 462(b) (the "RULE 462 REGISTRATION STATEMENT") under the Securities Act of 1933, as amended (the "SECURITIES ACT"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement.

The Company also has filed with the Commission a registration statement, including a prospectus, relating to the Selling Shareholder Shares, which registration statement as amended at the time it became effective, including the information (if any) deemed to be part of the registration statement at the time of effectiveness pursuant to Rule 430A under the Securities Act, is hereinafter referred to as the "RESALE REGISTRATION STATEMENT"; the prospectus relating to the Selling Shareholder Shares in the form first used to confirm sales of Selling Shareholder Sales is hereinafter referred to as the "RESALE PROSPECTUS."

The Company has filed with, or transmitted for filing to, or shall promptly hereafter file with or transmit for filing to, the Commission a prospectus supplement (the "PROSPECTUS SUPPLEMENT") specifically relating to the Shares, pursuant to Rule 424 under the Securities Act.

The term "PROSPECTUS" means the Prospectus Supplement together with the Base Prospectus and the Resale Prospectus. The term "PRELIMINARY PROSPECTUS" means a preliminary prospectus supplement specifically relating to the Shares together with the Base Prospectus and a preliminary Resale Prospectus. As used herein, the terms "Base Prospectus," "Resale Prospectus," "Prospectus", "preliminary prospectus", "Registration Statement" and "Resale Registration Statement" shall include in each case the documents, if any, incorporated or deemed to be incorporated by reference therein. The terms "supplement" and "amendment" or "amend" as used in this Agreement shall include all documents filed subsequent to the date of the Base Prospectus or the Resale Prospectus, as the case may be, by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT"), that are deemed to be incorporated by reference in the Prospectus.

1. Representations and Warranties. The Company represents and warrants to and agrees with each of the Underwriters that:

(a) Each of the Registration Statement and the Resale Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement or the Resale Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the knowledge of the Company, threatened by the Commission.

(b) (i) Each document, if any, filed or to be filed pursuant to the Exchange Act and incorporated by reference in the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) each of the Registration Statement and the Resale Registration Statement, when it became effective, did not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading,

(iii) each of the Registration Statement, the Resale Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder and (iv) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to (A) statements or omissions in the Registration Statement, the Resale

Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein or (B) to that part of the Registration Statement that constitutes the Statement of Eligibility ("Form T-1") under the Trust Indenture Act of 1939, as amended (the "TRUST INDENTURE ACT").

(c) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiary, taken as a whole.

(d) Aviron UK Limited has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiary, taken as a whole; all of the issued shares of capital stock of Aviron UK Limited have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, free and clear of all liens, encumbrances, equities or claims.

(e) This Agreement has been duly authorized, executed and delivered by the Company.

(f) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Prospectus.

(g) The shares of Common Stock (including the Selling Shareholder Shares) outstanding prior to the issuance of the Shares to be sold by the Company have been duly authorized and are validly issued, fully paid and non-assessable.

(h) The Shares to be sold by the Company have been duly authorized and, when issued and delivered in accordance with the terms of this Agreement, will be validly issued, fully paid and

non-assessable, and the issuance of such Shares will not be subject to any preemptive or similar rights.

(i) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement will not contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or its subsidiary that is material to the Company and its subsidiary, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or its subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the Company of its obligations under this Agreement, except such as have been obtained under the Securities Act and such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Shares.

(j) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiary, taken as a whole, from that set forth in the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement).

(k) There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or its subsidiary is a party or to which any of the properties of the Company or its subsidiary is subject that are required to be described in the Registration Statement, the Resale Registration Statement or the Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement, the Resale Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement or the Resale Registration Statement that are not described or filed as required.

(l) Each preliminary prospectus filed as part of the Registration Statement or the Resale Registration Statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424

under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(m) The Company is not, and after giving effect to the offering

and sale of the Shares and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(n) The Company and its subsidiary (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("ENVIRONMENTAL LAWS"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiary, taken as a whole.

(o) There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a material adverse effect on the Company and its subsidiary, taken as a whole.

(p) The Company and its subsidiary possess all consents, approvals, orders, certificates, authorizations and permits issued by, and have made all declarations and filings with, all appropriate federal, state or foreign governmental or self-regulatory authorities and all courts and other tribunals necessary to conduct their respective businesses and to own, lease, license and use their respective properties in the manner described in the Prospectus, except to the extent that the failure to obtain, possess or make a declaration or filing would not have a material adverse effect on the Company and its subsidiary, taken as a whole, and the Company and its subsidiary have not received any notice of proceedings relating to the revocation or modification of any such consent, approval, order, certificate, authorization or permit that, singly or in the aggregate, if the subject of any unfavorable decision, ruling or finding, or failure to obtain or file, would have a material adverse effect on the Company and its subsidiary, taken as a whole, except as described in the Prospectus.

(q) The Company owns or possesses adequate licenses or other rights to use all patents, copyrights, trademarks, service marks, trade names, technology and know-how necessary to conduct its businesses in the manner described in the Prospectus or could obtain such licenses or rights on terms that would not have a material adverse effect on the Company and its subsidiary, taken as a whole, and, except as disclosed in the Prospectus, the Company has not received any notice of infringement with respect to any patents, copyrights, trademarks, service marks, trade names, technology or know-how which could reasonably be expected to result in any material adverse effect on the Company and its subsidiary, taken as a whole; and, except as disclosed in the Prospectus, the discoveries, inventions, products or processes of the Company referred to in the Prospectus do not, to the best knowledge of the Company, infringe any patent or other intellectual property right of any third party, or any discovery, invention, product or process that is the object of a patent application filed by any third party known to the Company, except for any such infringement which would not have a material adverse effect on the Company and its subsidiary, taken as a whole.

(r) There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company or to require the Company to include such securities with the Shares registered pursuant to the Registration Statement or the Resale Registration Statement except as described in the Prospectus, all of which have been validly waived.

(s) The Company is not presently (a) in material violation of its charter or bylaws, or (b) subject to any material order, writ or decree applicable specifically to the Company of any court or governmental agency or body having jurisdiction over the Company, or over any of its properties or operations.

2. Representations and Warranties of the Selling Shareholders. Each Selling Shareholder represents and warrants to and agrees with each of the Underwriters that:

(a) This Agreement has been duly authorized, executed and delivered by or on behalf of such Selling Shareholder.

(b) The execution and delivery by such Selling Shareholder of, and the performance by such Selling Shareholder of his obligations under, this Agreement, the Irrevocable Power of Attorney and Custody Agreement ("POWER OF ATTORNEY AND CUSTODY AGREEMENT") signed by such Selling Shareholder and Boston Equiserve Limited Partnership, as Custodian, relating to the deposit of the Selling Shareholder Shares to be sold by such Selling Shareholder and appointing certain individuals as such Selling Shareholder's attorneys-in-fact to the extent set

forth therein, relating to the transactions contemplated hereby and by the Prospectus and the Resale Registration Statement, will not contravene any agreement or other instrument binding upon such Selling Shareholder or any judgment, order or decree of any governmental body, agency or court having jurisdiction over such Selling Shareholder, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by such Selling Shareholder of his obligations under this Agreement, the Power of Attorney and Custody Agreement, except such as have been obtained under the Securities Act and such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Selling Shareholder Shares.

(c) Such Selling Shareholder on the Option Closing Date will have valid title to the Selling Shareholder Shares to be sold by such Selling Shareholder and the legal right and power, and all authorization and approval required by law, to enter into this Agreement and the Power of Attorney and Custody Agreement and to sell, transfer and deliver the Selling Shareholder Shares to be sold by such Selling Shareholder.

(d) The Power of Attorney and Custody Agreement has been duly authorized, executed and delivered by such Selling Shareholder and is a valid and binding agreement of such Selling Shareholder.

(e) Delivery of the Selling Shareholder Shares to be sold by such Selling Shareholder pursuant to this Agreement will pass title to such Selling Shareholder Shares free and clear of any security interests, claims, liens, equities and other encumbrances, assuming the Underwriters have purchased such Selling Shareholder Shares in good faith and without notice of any adverse claims.

3. Agreements to Sell and Purchase. The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective numbers of Firm Shares set forth in Schedule I hereto opposite its name at $47.50 a share (the "PURCHASE PRICE").

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, each Seller, severally and not jointly, agrees to sell to the Underwriters the Additional Shares, and the Underwriters shall have a one-time right to purchase, severally and not jointly, up to 600,000 Additional Shares at the Purchase Price. If you, on behalf of the Underwriters, elect to exercise such option, you shall so notify the Company in writing not later than 30 days after the date of this Agreement, which notice shall specify the number of Additional Shares to be purchased by the

Underwriters and the date on which such Additional Shares are to be purchased. Such date may be the same as the Closing Date (as defined below) but not earlier than the Closing Date nor later than ten business days after the date of such notice. Additional

Shares may be purchased as provided in Section 5 hereof solely for the purpose of covering over-allotments made in connection with the offering of the Firm Shares. If any Additional Shares are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the number of Additional Shares (subject to such adjustments to eliminate fractional securities as you may determine) that bears the same proportion to the total number of Additional Shares to be purchased as the number of Firm Shares set forth in Schedule I hereto opposite the name of such Underwriter bears to the total number of Firm Shares. If the Underwriters shall exercise such option for less than all of the Additional Shares, the Underwriters shall purchase from each Seller approximately the same percentage of shares that each Seller has committed to sell, respectively, as Additional Shares.

The Company hereby agrees that, without the prior written consent of Morgan Stanley & Co. Incorporated on behalf of the Underwriters, it will not, during the period ending 90 days after the date of the Prospectus Supplement, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Shares to be sold hereunder, (B) the issuance by the Company of shares of Common Stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date hereof, (C) the grant by the Company of options to purchase Common Stock pursuant to the terms of an employee benefit plan in effect on the date hereof or exercise of stock options outstanding on the date hereof or (D) the sale of up to $200,000,000 principal amount of the Company's convertible subordinated notes pursuant to an underwriting agreement dated the date hereof among the Company and the underwriters named therein or the issuance of the underlying securities upon conversion of such notes.

4. Terms of Public Offering. The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Shares as soon after the Registration Statement, the Resale Registration Statement and this Agreement have become effective as in your judgment is

advisable. The Sellers are further advised by you that the Shares are to be offered to the public initially at $50.00 a share (the "PUBLIC OFFERING PRICE") and to certain dealers selected by you at a price that represents a concession not in excess of $1.63 a share under the Public Offering Price. No Underwriter may allow, and no dealer may reallow, a concession to any Underwriter or dealer.

5. Payment and Delivery. Payment for the Firm Shares shall be made to the Company in Federal or other funds immediately available in New York City against delivery of such Firm Shares for the respective accounts of the

several Underwriters at 10:00 a.m., New York City time, on February 7, 2001, or at such other time on the same or such other date, not later than February 14, 2001, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "CLOSING DATE."

Payment for any Additional Shares to be sold by each Seller shall be made to such Seller in Federal or other funds immediately available in New York City against delivery of such Additional Shares for the respective accounts of the several Underwriters at 10:00 a.m., New York City time, on the date specified in the notice described in Section 2 or at such other time on the same or on such other date, in any event not later than March 16, 2001 as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "OPTION CLOSING DATE."

Certificates for the Firm Shares and Additional Shares shall be in definitive form and registered in such names and in such denominations as you shall request in writing not later than one full business day prior to the Closing Date or the Option Closing Date, as the case may be. The certificates evidencing the Firm Shares and Additional Shares shall be delivered to you on the Closing Date or the Option Closing Date, as the case may be, for the respective accounts of the several Underwriters, with any transfer taxes payable in connection with the transfer of the Shares to the Underwriters duly paid, against payment of the Purchase Price therefor.

6. Conditions to the Underwriters' Obligations. The obligations of the Company to sell the Shares to the Underwriters and the several obligations of the Underwriters to purchase and pay for the Shares on the Closing Date are subject to the condition that each of the Registration Statement and the Resale Registration Statement shall have become effective not later than 4:30 p.m. (New York City time) on the date hereof.

The several obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition,

financial or otherwise, or in the earnings, business or operations of the Company and its subsidiary, taken as a whole, from that set forth in the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement) that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 6(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion of Latham & Watkins, outside counsel for the Company, dated the Closing Date to the effect that:

(i) the Company is a corporation and is validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and corporate authority to own its properties and to conduct its business as described in the Prospectus and Registration Statement;

(ii) the Company is qualified to do business in the States of California and Pennsylvania;

(iii) the Shares to be issued and sold by the Company pursuant to this Agreement have been duly authorized and, when issued to and paid for by you in accordance with the terms of this Agreement, will be validly issued, fully paid and non-assessable, and, to such counsel's knowledge, free of preemptive rights arising under the Company's certificate of incorporation or the Delaware General Corporation Law;

(iv) this Agreement has been duly authorized, executed and delivered by the Company;

(v) the issuance and sale of the Shares by the Company pursuant to this Agreement will not result in (A) the violation by the Company of its Certificate of Incorporation or By-laws, (B) to such

counsel's knowledge, the violation of any federal or California statute, rule or regulation known to such counsel to be applicable to the Company or (C) to such counsel's knowledge, the breach of or a default under any material agreement or other instrument binding upon the Company or its subsidiary that has been filed as an exhibit to the Registration Statement or the Resale Registration Statement or, to such counsel's knowledge, any court order listed on a schedule to such opinion;

(vi) no consent, approval, authorization or order of, or filing with, any federal or California court or governmental body or agency is required for the issuance and sale of the Shares by the Company pursuant to this Agreement, except such as have been obtained under the Securities Act and such as may be required under state securities laws in connection with the purchase and distribution of the Shares by the Underwriters;

(vii) the statements set forth (A) in the Prospectus under the caption "Description of Capital Stock" and (B) in the Registration Statement and the Resale Registration Statement in Item 15, under the caption "Indemnification of Directors and Officers", in each case insofar as such statements constitute summaries of legal matters are accurate in all material respects;

(viii) to such counsel's knowledge, there are no legal proceedings, contracts or documents of a character required to be described in the Registration Statement, the Resale Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement or the Resale Registration Statement that are not described and filed as required;

(ix) after giving effect to the Company's sale of the Shares and the application of the net proceeds therefrom, the Company is not an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(x) the Registration Statement, the Resale Registration Statement and the Prospectus (including the documents incorporated therein by reference) comply as to form in all material respects with the requirements for registration statements on Form S-3 under the Securities Act and the rules and regulations of the Commission thereunder; provided, however, that such counsel need not express any opinion with respect to the financial statements, schedules or other financial or statistical data included or incorporated by reference in, or omitted from, the Registration Statement, the Resale Registration Statement or the Prospectus or with respect to the Form T-1.

(xi) No facts have come to such counsel's attention that caused such counsel to believe that the Registration Statement or the Resale Registration Statement, at the respective times they became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus or the Resale Prospectus (including the documents incorporated therein by reference), as of their respective dates or as of the date hereof, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; it being understood that such counsel expresses no opinion with respect to the financial statements, schedules and other financial and statistical data included or incorporated by reference in, or omitted from, the Registration Statement, the Prospectus, the Resale Registration Statement or the Resale Prospectus or with respect to the Form T-1.

(d) The Underwriters shall have received on the Closing Date an opinion of Pennie and Edmonds, patent counsel for the Company as to Section A of the Patent Portfolio attached hereto as Exhibit B (the "PATENT PORTFOLIO"), dated the Closing Date, to the effect that:

(i)to the best of such counsel's knowledge, the Company owns each of the United States patents and patent applications listed in Section A of the Patent Portfolio;

(ii) to the best of such counsel's knowledge, there are no material legal or governmental proceedings, pending or threatened, with respect to any of the United States patents listed in Section A of the Patent Portfolio;

(iii) to the best of such counsel's knowledge, the Company has not received any notice with respect to the potential infringement of or proceedings against any patents or trade secrets of others;

(iv) to the best of such counsel's knowledge, without any searches having been conducted for the purpose of rendering this opinion, no third parties are infringing any of the United States patents listed in Section A of the Patent Portfolio;

(v) while there can be no guarantee that any particular patent application will issue as a patent, each of the United States patent applications listed in Section A of the Patent Portfolio that we filed in the United States Patent and Trademark Office was

properly filed and is being diligently prosecuted in, the United States Patent and Trademark Office;

(vi) while there can be no guarantee that any particular patent application will issue as a patent, each of the United States patent applications listed in Section A of the Patent Portfolio that we did not file in the United States Patent and Trademark Office, from the time we assumed responsibility for the prosecution, is being diligently prosecuted in the United States Patent and Trademark Office; and

(vii) the statements contained in the Prospectus under the caption "Business - Legal Proceedings," with respect to the first paragraph thereunder regarding proceedings before the European Patent Office, insofar as such statements constitute matters of law, are a fair and accurate summary of the matters set forth therein.

(e) The Underwriters shall have received on the Closing Date an opinion of Marshall O'Toole Gerstein Murray & Borun, patent counsel for the Company as to Section B of the Patent Portfolio, dated the Closing Date, to the effect that:

(i) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, except as otherwise

disclosed in the Prospectus, there are no legal or governmental proceedings relating to patent rights owned, licensed, or used by the Company pending against the Company or any third parties and, except for the Company's pending patent applications, to the best of such counsel's knowledge, there are no legal or governmental proceedings relating to patent rights owned, licensed or used by third parties pending against the Company. To the best of such counsel's knowledge, other than those disclosed in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or others;

(ii) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company has no notice of any infringement by a third party of any patent owned or used by the Company; and to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company has not received notice of any claims of infringement by the Company of any patent owned or used by a third party;

(iii) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company or one of its licensors is the sole assignee for each patent and

patent application listed in Section B of the Patent Portfolio. To the best of such counsel's knowledge, the assignments by the named inventors have been submitted to the USPTO and those assignments have been recorded in the assignment records of the USPTO. However, in one or more of the patents and patent applications listed in Section B of the Patent Portfolio, the United States government may hold a nonexclusive, royalty-free license as a result of providing research funding;

(iv) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company's United States patent applications listed in Section B of the Patent Portfolio have been prepared and filed in the USPTO in a form and with accompanying papers that are acceptable to the USPTO for the purposes of according each such application a filing date and serial number, and of placing each such application in condition for eventual examination on the merits as to patentability. For each such United States application, except as otherwise noted in Exhibit B attached to this opinion, an Official Filing Receipt has been received from the USPTO. As to each of such applications, such counsel is not aware of any material defect of

form in preparation or filing. However, there is no assurance that patents will issue from any pending United States application, or that any claims will be allowed without amendment. Neither is there any assurance that a patent will issue without appeal to the Board of Patent Appeals and Interferences or to the Federal courts;

(v) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, each of the Company's foreign patents and patent applications listed in Section B of the Patent Portfolio has been submitted to patent firms in the respective foreign countries with instructions to file the applications in the patent offices of those countries naming the Company or one its licensors as applicant and/or owner of record. The Patent Cooperation Treaty applications have been submitted directly to the relevant patent examining authority of those countries naming the Company or one of its licensors as the applicant and/or owner of record. In each such application, written confirmation has been received that the application has been accepted for filing by such patent office, or patent examining authority. There is no assurance that the patent offices of the respective countries will not reject the claims of the foreign patent applications as being unpatentable, or that any claims will be allowed without amendment, nor is there any assurance that these patent authorities will ultimately conclude that the foreign patent applications meet all requirements for patentability. Such counsel is not aware of any material defect of form in preparation or filing.

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To the best of such counsel's knowledge, other than two oppositions filed in the European Patent Office against European Patent No. 500,917 corresponding to Marshall O'Toole reference No. 27373/8235-EPO as listed in Section B of the Patent Portfolio, there are no legal or governmental proceedings relating to any foreign patent rights or foreign parent applications owned, licensed or used by the Company pending against the Company or any third party and, except for prosecution of pending patent applications, to the best of such counsel's knowledge, there are no legal or governmental proceedings relating to any foreign patent rights of foreign patent applications owned, licensed or used by third parties pending against Aviron. To the best of such counsel's knowledge, other than otherwise disclosed in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or others; and

(vi) the patent applications in Section B of the Patent Portfolio are being diligently pursued.

(f) The Underwriters shall have received on the Closing Date an opinion of the Law Office of LuAnn Cserr, outside patent counsel for the Company as to Section C of the Patent Portfolio, dated the Closing Date to the effect that:

(i) except as disclosed in the Prospectus under the captions "Risk Factors - Other Risks Related to Our Company - We may not receive patent protection for our potential products and manufacturing processes" and "Business - Legal Proceedings," to the best of such counsel's knowledge, the Company has received no notice of any infringement or misappropriation by a third party of any patent in Section C of the Patent Portfolio or notice of any infringement or misappropriation by the Company of any patents, trade secrets, trademarks, trade names, copyrights or other proprietary rights of a third party;

(ii) except as disclosed in the Prospectus under the captions "Risk Factors - Other Risks Related to Our Company - We may not receive patent protection for our potential products and manufacturing processes" and "Business - Legal Proceedings," to the best of such counsel's knowledge, the Company or its licensor is the sole assignee for each United States patent and patent application listed in Section C of the Patent Portfolio. Except as otherwise noted in Section C of the Patent Portfolio attached hereto, for each of the United States patents and patent applications, the assignments by the named inventors have been submitted to the United States Patent and Trademark Office ("USPTO") and those assignments have been recorded in the

Patent Office's title records. However, in one or more of the patents and patent applications listed in Section C of the Patent Portfolio, the United States government may hold a nonexclusive, royalty-free license as a result of providing research funding;

(iii) to such counsel's knowledge, the Company's United States patent applications listed in Section C of the Patent Portfolio have been prepared and filed in the USPTO in a form and with accompanying papers that are acceptable to the USPTO for the purposes of according each such application a filing date and serial number, and of placing each such application in condition for eventual examination on the merits as to patentability. For each such United States patent application, such counsel is not aware of any material defect of form in preparation or filing;

(iv) to such counsel's knowledge, except as disclosed in the Prospectus, as to each of the Company's foreign patent applications listed in Section C of the Patent Portfolio, the applications have either (a) been submitted to patent firms in the respective foreign countries with instructions to file the applications in the patent offices of those countries naming the Company as the applicant of record, or (b) as to certain Patent Cooperation Treaty applications, been submitted directly to the relevant receiving office naming the Company as the applicant of record. To the best of such counsel's knowledge and except as noted in Section C of the Patent Portfolio, as to each of such applications, the Company has not received notice from any foreign filing authority of any material defect of form in the preparation or filing; and

(g) The Underwriters shall have received on the Closing Date an opinion of Latham & Watkins, U.K. counsel for the Company, dated the Closing Date to the effect that:

(i)Aviron UK Limited is duly incorporated and existing as a private limited company registered in England and Wales under company number 3854275 and is authorised pursuant to its Memorandum of Association to carry on its current business and to occupy its current premises. Aviron UK Limited is in good standing as shown by the Certificate of Good Standing received from the Registrar of Companies; and

(ii) the authorised share capital of Aviron UK Limited is Pound Sterling1000 divided into 1000 ordinary shares of Pound Sterling1 each of which 1 share has been validly issued and is fully paid up. Aviron is the registered owner of the only issued ordinary share of Pound Sterling1 in the

capital of Aviron UK Limited, free and clear of all liens, encumbrances, equities or claims.

(h) The Underwriters shall have received on the Option Closing Date an opinion of Latham & Watkins, counsel to the Selling Shareholders, dated the Option Closing Date to the effect that:

(i) each of this Agreement and the Power of Attorney and Custody Agreement has been duly executed and delivered by or on behalf of each of the Selling Shareholders;

(ii) upon (i) payment for the Selling Shareholder Shares in accordance with the terms of this Agreement, (ii) physical delivery of the Selling Shareholder Shares to the transfer agent, with stock powers duly endorsed to The Depository Trust Company or its nominee ("DTC") by an effective endorsement, (iii) physical delivery of the Selling Shareholder Shares to DTC, with stock powers duly endorsed to DTC by an effective endorsement, (iv) registration by book-entry to the Underwriters' securities accounts with DTC of the purchase of the Selling Shareholder Shares in the records of DTC and (v) registration by book-entry of the credit to the Underwriters' securities accounts of the purchase of the Selling Shareholder Shares in the records of any other "securities intermediary" (as defined in Section 8-102(a)(14) of the New York UCC) which acts as a "clearing corporation" (as defined in Section 8-102(a)(5) of the New York UCC) or maintains "securities accounts" (as defined in Section 8-501(a) of the New York UCC) with respect to the transfer of the Selling Shareholder Shares to the Underwriters, then the Underwriters will become the "entitlement holders" (as defined in Section 8-102(a)(7) of the New York UCC) of the Selling Shareholder Shares, free of any "adverse claims" (as defined in Section 8-102(a)(1) of the New York UCC).

(i) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell, counsel for the Underwriters, dated the Closing Date, covering the matters referred to in Sections 6(c)(iv), 6(c)(vii) (but only as to the statements in the Prospectus under "Description of Capital Stock" and "Underwriters") and 6(c)(x) and 6(c)(xi) above.

With respect to Section 6(c)(xi) above, Latham & Watkins and Davis Polk & Wardwell may state that their opinion and belief are based upon their participation in the preparation of the Registration Statement, the Resale Registration Statement and Prospectus and any amendments or supplements thereto (other than the documents incorporated by reference) and review and discussion of the contents thereof (including the documents incorporated therein by reference), but are without independent check or verification, except as specified.

The opinions of Latham & Watkins, Pennie and Edmonds, Marshall O'Toole Gerstein Murray & Borun and the Law Offices of LuAnn Cserr described in Sections 6(c), 6(d), 6(e), 6(f), 6(g) and 6(h) above shall be rendered to the Underwriters at the request of the Company or one or more of the Selling Shareholders, as the case may be, and shall so state therein.

(j) The Underwriters shall have received, on each of the date

hereof, the Closing Date and, if applicable, the Option Closing Date, a letter dated the date hereof, the Closing Date or the Option Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Ernst & Young LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement, the Resale Registration Statement and the Prospectus; provided that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

(k) The "lock-up" agreements, each substantially in the form of Exhibit A hereto (collectively, the "LOCK-UP AGREEMENTS"), between you and the officers and directors of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

The several obligations of the Underwriters to purchase Additional Shares hereunder are subject to the delivery to you on the Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Shares and other matters related to the issuance of the Additional Shares.

7. Covenants of the Company. In further consideration of the agreements of the Underwriters herein contained, the Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, four signed copies of each of the Registration Statement and the Resale Registration Statement (each including exhibits thereto and documents incorporated therein by reference) and for delivery to each other Underwriter a conformed copy of each of the Registration Statement and the Resale Registration Statement (each without exhibits thereto but including documents incorporated therein by reference) and to furnish to you, without charge, on the business day next succeeding the date of this Agreement and during the period mentioned in Section 7(c) below, as many copies of the Prospectus and any supplements and amendments thereto or to the Registration Statement or the Resale Registration Statement as you may reasonably request.

(b) Before amending or supplementing the Registration Statement, the Resale Registration Statement or the Prospectus, to furnish to you a copy of each such proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object,

and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) If, during such period after the first date of the public offering of the Shares as in the opinion of counsel for the Underwriters the Prospectus is required by law to be delivered in connection with sales of Shares by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish,

at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Shares may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law.

(d) To endeavor to qualify the Shares for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request.

(e) To make generally available to the Company's security holders and to you as soon as practicable an earning statement covering the twelve-month period ending March 31, 2002 that satisfies the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(f) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel, the Company's accountants and counsel to the Selling Shareholders in connection with the registration and delivery of the Shares under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, the Resale Registration Statement, any preliminary prospectus, the Prospectus and amendments and supplements to any of the foregoing, including all printing costs associated therewith,

and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and delivery of the Shares to the Underwriters, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Shares under state securities laws and all expenses in connection with the qualification of the Shares for offer and sale under state securities laws as provided in Section 7(d) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incurred in connection with the review and qualification of the offering of the Shares by the National Association of Securities Dealers, Inc., (v) all costs and expenses incident to listing the Shares on the Nasdaq National Market, (vi) the cost of printing certificates representing the Shares, (vii) the costs and charges of any transfer agent,

registrar or depositary, (viii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Shares, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, and (ix) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 8 entitled "Indemnity and Contribution," and the last paragraph of Section 10 below, the Underwriters will pay all of their costs and expenses, including fees and disbursements of their counsel, stock transfer taxes payable on resale of any of the Shares by them and any advertising expenses connected with any offers they may make.

The provisions of this Section 7(f) shall not supersede or otherwise affect any agreement that the Sellers may otherwise have for the allocation of such expenses among themselves.

(g) To issue stop-transfer instructions to the transfer agent for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the applicable Lock-up Agreement.

8. Indemnity and Contribution. (a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, the Resale Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein; provided that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Underwriter from whom the person asserting any such losses, claims, damages or liabilities purchased Shares, or any person

controlling such Underwriter, if a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Shares to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such losses, claims, damages or liabilities, unless such failure is the result of noncompliance by the Company with Section 7(a) hereof.

(b) Each Selling Shareholder agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors, its officers who sign the Resale Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and each Underwriter and each person, if any, who controls any Underwriter within the meaning of either such section, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Resale Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements

therein not misleading, but only with reference to information relating to such Selling Shareholder furnished in writing by or on behalf of such Selling Shareholder expressly for use in the Resale Registration Statement, any preliminary prospectus, the Prospectus or any amendments or supplements thereto; provided that with respect to any amount due an indemnified person under this paragraph (b), such Selling Shareholder shall be liable only to the extent of the net proceeds received by such Selling Shareholder from the sale of the Selling Shareholder Shares to be sold by such Selling Shareholder; and provided further, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Underwriter from whom the person asserting any such losses, claims, damages or liabilities purchased Shares, or any person controlling such Underwriter, if a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Shares to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such losses, claims, damages or liabilities, unless such failure is the result of noncompliance by the Company with Section 7(a) hereof.

(c) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the Selling Shareholders, the directors of the Company, the officers of the Company who sign the Registration Statement or the Resale Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, the Resale Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through you expressly for use in the Registration Statement, the Resale Registration Statement, any preliminary prospectus, the Prospectus or any amendments or supplements thereto.

(d) In case any proceeding (including any governmental

investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 8(a), 8(b) or 8(c), such person (the "INDEMNIFIED PARTY") shall promptly notify the person against whom such indemnity may be sought (the "INDEMNIFYING PARTY") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Underwriters and all persons, if any, who control any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, (ii) the fees and expenses of more than one separate firm

(in addition to any local counsel) for the Company, its directors, its officers who sign the Registration Statement or the Resale Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and (iii) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Selling Shareholders and all persons, if any, who control any Selling Shareholder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Underwriters and such control persons of any Underwriters, such firm shall be designated in writing by Morgan Stanley & Co. Incorporated. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. In the case of any such separate firm for the Selling Shareholders and such control persons of any Selling Shareholders, such firm shall be designated in writing by the persons named as attorneys-in-fact for the Selling Shareholders under the Power of Attorney and Custody Agreement. The indemnifying party shall not be liable for any settlement of any proceeding effected

without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(e) To the extent the indemnification provided for in Section 8(a), 8(b) or 8(c) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is

appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Shares or (ii) if the allocation provided by clause 8(e)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 8(e)(i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by each Seller on the one hand and the Underwriters on the other hand in connection with the offering of the Shares shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Shares (before deducting expenses) received by each Seller and the total underwriting

discounts and commissions received by the Underwriters, in each case as set forth in the Prospectus under the caption "Underwriters" or in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Shares. The relative fault of the Sellers on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Sellers or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to contribute pursuant to this Section 8 are several in proportion to the respective number of Shares they have purchased hereunder, and not joint.

(f) The Sellers and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 8 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 8(e). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 8, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Shares underwritten by it and distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent

misrepresentation. The remedies provided for in this Section 8 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(g) The indemnity and contribution provisions contained in this Section 8 and the representations, warranties and other statements of the Company and the Selling Shareholders contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter, the Selling Shareholders or by or on behalf of the Company, its officers or

directors or any person controlling the Company and (iii) acceptance of and payment for any of the Shares.

9. Termination. This Agreement shall be subject to termination by notice given by you to the Company, if (a) after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, Inc., the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and (b) in the case of any of the events specified in clauses 9(a)(i) through 9(a)(iv), such event, singly or together with any other such event, makes it, in your judgment, impracticable to market the Shares on the terms and in the manner contemplated in the Prospectus.

10. Effectiveness; Defaulting Underwriters. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or the Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Shares that it has or they have agreed to purchase hereunder on such date, and the aggregate number of Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate number of the Shares to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the number of Firm Shares set forth opposite their respective names in Schedule I bears to the aggregate number of Firm Shares set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Shares which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; provided that in no event shall the number of Shares that any Underwriter has agreed to purchase pursuant to this Agreement be increased

pursuant to this Section 10 by an amount in excess of one-ninth of such number of Shares without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Shares and the aggregate number of Firm Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Firm Shares to be purchased, and arrangements satisfactory to you and the Company for the purchase of such Firm Shares are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any

non-defaulting Underwriter or the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement, the Resale Registration Statement and the Prospectus or in any other documents or arrangements may be effected. If, on the Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Shares and the aggregate number of Additional Shares with respect to which such default occurs is more than one-tenth of the aggregate number of Additional Shares to be purchased, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase Additional Shares or (ii) purchase not less than the number of Additional Shares that such non-defaulting Underwriters would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of them, because of any failure or refusal on the part of any Seller to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason any Seller shall be unable to perform its obligations under this Agreement, the Sellers will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

11. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

12. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

13. Headings. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

Very truly yours,

AVIRON

By: _____

Name:

Title:

The Selling Shareholders named in
Schedule II Hereto, acting severally

By:

Name:
Title: Attorney-in-Fact

Accepted as of the date hereof
MORGAN STANLEY & CO. INCORPORATED
J.P. MORGAN SECURITIES INC.
SG COWEN SECURITIES CORPORATION
Acting severally on behalf of themselves and
the several Underwriters named in
Schedule I hereto.

By: Morgan Stanley & Co. Incorporated

By:

Name:
Title:

SCHEDULE I

<TABLE>
<CAPTION>

UNDERWRITER	NUMBER OF FIRM SHARES TO BE PURCHASED
<S>	<C>
Morgan Stanley & Co. Incorporated	1,456,000
J.P. Morgan Securities Inc.	1,092,000
SG Cowen Securities Corporation	1,092,000
Bear, Stearns & Co. Inc.	60,000
First Union Securities, Inc.	60,000
Edward D. Jones & Co., L.P.	60,000

Leerink Swann & Company	60,000
Punk, Ziegel & Company, L.P.	60,000
U.S. Bancorp Piper Jaffray Capital Markets	60,000
Total:	4,000,000

</TABLE>

SCHEDULE II

<TABLE>
<CAPTION>

SELLING SHAREHOLDER	NUMBER OF ADDITIONAL SHARES TO BE SOLD
<S>	<C>
J. Leighton Read	150,000
Bernard Roizman	50,000
Total:	200,000

</TABLE>

EXHIBIT A

[FORM OF LOCK-UP LETTER]

_____, 2001

Morgan Stanley & Co. Incorporated
J.P. Morgan Securities Inc.
SG Cowen Securities Corporation
c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Dear Sirs and Mesdames:

The undersigned understands that Morgan Stanley & Co. Incorporated

("MORGAN STANLEY") proposes to enter into an Underwriting Agreement (the "UNDERWRITING AGREEMENT") with Aviron, a Delaware corporation (the "COMPANY"), and the selling shareholders named in Schedule II thereto, providing for the public offering (the "PUBLIC OFFERING") by the several Underwriters, including Morgan Stanley (the "UNDERWRITERS"), of shares (the "SHARES") of the common stock, par value $0.001 per share, of the Company (the "COMMON STOCK").

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of Morgan Stanley on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final prospectus supplement relating to the Public Offering (the "PROSPECTUS"), (1) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) the sale of any Shares to the Underwriters pursuant to the Underwriting Agreement, (b) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering and (c) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift or gifts; provided that in the case of any transfer pursuant to clause (c), (i) each donee shall execute and deliver to Morgan Stanley a duplicate form of this lock-up agreement and (ii) no filing by any party (donor, donee, transferor or transferee) under Section 16(a) of the Securities Exchange Act of 1934, as amended, shall be required or shall be

made voluntarily in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 90-day period referred to above). In addition, the undersigned agrees that, without the prior written consent of Morgan Stanley on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 90 days after the date of the Prospectus, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are

relying upon this lock-up agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this lock-up agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters. This agreement will terminate if the Underwriting Agreement has not been executed on or before June 1, 2001 or if the Company notifies you (with the prior written consent of Morgan Stanley, such consent not to be unreasonably withheld) that it does not intend to proceed with the Public Offering.

Very truly yours,

(Name)

(Address)

EXHIBIT B

PATENT PORTFOLIO

SECTION A -- (PENNIE & EDMONDS)

<TABLE>
<CAPTION>

P&E DOCKET NO.	P&E DOCKET NO.
<S>	<C>
7682-0010	7682-0025
7682-0021	7682-0048
7682-0035	7682-0045
7682-0036	7682-0047
7682-0034	7682-0049
7682-0044	7682-0039
7682-0019	7682-0038
7682-0037	7682-0050
7682-0051	7682-0052

7682-0053 7682-0054
7682-0055
</TABLE>

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EXHIBIT B (CONT'D)

SECTION B -- (MARSHALL O'TOOLE)

<TABLE>
<CAPTION>

MARSHALL DOCKET NO.	MARSHALL DOCKET NO.
<S>	<C>
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27373/32908	27373/32742A
27373/0001	27373/31916
27373/0003	27373/0002F
27373/8235	27373/0002E
27373/31746CA	28097/33309
27373/31746JP	27373/0002B
27373/32908CA	27373/0002D
27373/32908JP	27373/31746EPO
27373/8235JP	27373/32908EPO
27373/0001EPO	27373/8235CA
27373/0002EPO	27373/31746AU
27373/0002AJP	27373/0001CA
27373/0003EPO	27373/0002JP
27373/0003JP	27373/0003AU
27373/8235AU	27373/0003CA
27373/31011KR	27373/0003ZA
	27373/8235EPO

</TABLE>

36

EXHIBIT B (CONT'D)

SECTION C - (LAW OFFICES OF LUANN CSERR)

AVIRON REFERENCE NO.

5016
5016.1
5016.2
5018 IN
5018 MY
5019
5019.1
5019.2
5019.3
5019 PCT
5019 AU
5019 CA
5019 EP
5019 JP
5021
5021.1
5021.2
5021 PCT
5021 AU
5021 CA
5021 EP
5021 JP
5021 SK
5022
5022.1
5023.1
5023 PCT
AV 9801 US

1

EXHIBIT 1.2

FORM OF DEBT UNDERWRITING AGREEMENT

$200,000,000

AVIRON

5-1/4% CONVERTIBLE SUBORDINATED NOTES DUE 2008

UNDERWRITING AGREEMENT

February 1, 2001

2

February 1, 2001

Morgan Stanley & Co. Incorporated
Chase Securities Inc.
SG Cowen Securities Corporation
c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, New York 10036

Dear Sirs and Mesdames:

AVIRON, a Delaware corporation (the "COMPANY"), proposes to issue and sell to the several Underwriters named in Schedule I hereto (the "UNDERWRITERS") $200,000,000 principal amount of its 5-1/4% Convertible Subordinated Notes due 2008 (the "FIRM NOTES") to be issued pursuant to the provisions of an Indenture to be dated as of February 7, 2001 (the "INDENTURE") between the Company and HSBC Bank USA as Trustee (the "TRUSTEE"). The Company also proposes to issue and sell to the several Underwriters not more than an additional $30,000,000 principal amount of its 5-1/4% Convertible Subordinated Notes due 2008 (the "ADDITIONAL NOTES"), if and to the extent that you, as managers of the offering, shall have determined to exercise, on behalf of the Underwriters, the right to purchase such 5-1/4% Convertible Subordinated Notes due 2008 granted to the Underwriters in Section 2 hereof. The Firm Notes and the Additional Notes are

hereinafter collectively referred to as the "NOTES." The Notes will be convertible into shares of common stock of the Company, par value $0.001 per share (the "UNDERLYING SECURITIES"). The shares of common stock, par value $0.001 per share, of the Company are hereinafter referred to as the "COMMON STOCK."

The Company has filed with the Securities and Exchange Commission (the "COMMISSION") a registration statement, including a prospectus, relating to the Notes and its Common Stock. The term "REGISTRATION STATEMENT" means such registration statement, including the exhibits thereto, as amended to the date of this Agreement. The term "BASE PROSPECTUS" means the prospectus included in the Registration Statement. If the Company has filed or files an abbreviated registration statement to register additional shares of common stock or debt securities pursuant to Rule 462(b) (the "RULE 462 REGISTRATION STATEMENT") under the Securities Act of 1933, as amended (the "SECURITIES ACT"), then any reference herein to the term "Registration Statement" shall be deemed to include such Rule 462 Registration Statement.

The Company has filed with, or transmitted for filing to, or shall promptly hereafter file with or transmit for filing to, the Commission a prospectus supplement (the "PROSPECTUS SUPPLEMENT") specifically relating to the Notes pursuant to Rule 424 under the Securities Act of 1933, as amended (the "SECURITIES ACT").

The term "PROSPECTUS" means the Base Prospectus together with the Prospectus Supplement. The term "PRELIMINARY PROSPECTUS" means a preliminary prospectus supplement specifically relating to the Notes together with the Base Prospectus. As used herein, the terms "Base Prospectus," "Prospectus," "Registration Statement" and "preliminary prospectus" shall include in each case the documents, if any, incorporated by reference therein. The terms "SUPPLEMENT" and "AMENDMENT" or "AMEND" as used in this Agreement shall include all documents filed subsequent to the date of the Base Prospectus by the Company with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the "EXCHANGE ACT"), that are deemed to be incorporated by reference in the Prospectus.

The Notes, which have been registered as debt securities under the Registration Statement, shall have the terms set forth in the Base Prospectus and the Prospectus Supplement.

1. Representations and Warranties. The Company represents and warrants to and agrees with each of the Underwriters that:

(a) The Registration Statement has become effective; no stop order suspending the effectiveness of the Registration Statement is in effect, and no proceedings for such purpose are pending before or, to the knowledge of the Company, threatened by the Commission.

(b) (i) Each document, if any, filed or to be filed pursuant to

the Exchange Act and incorporated by reference in the Prospectus complied or will comply when so filed in all material respects with the Exchange Act and the applicable rules and regulations of the Commission thereunder, (ii) the Registration Statement, when it became effective, did not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, (iii) the Registration Statement and the Prospectus comply and, as amended or supplemented, if applicable, will comply in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder and (iv) the Prospectus does not contain and, as amended or supplemented, if applicable, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except that the representations and warranties set forth in this paragraph do not apply to (A) statements or omissions in the Registration Statement or the Prospectus based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein or (B) to that part of the Registration Statement that constitutes the Statement of Eligibility ("Form T-1") under the Trust Indenture Act of 1939, as amended (the "TRUST INDENTURE ACT").

(c) The Company has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiary, taken as a whole.

(d) Aviron UK Limited has been duly incorporated, is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to own its property and to conduct its business as described in the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which the conduct of its business or its ownership or leasing of property requires such qualification, except to the extent that the failure to be so qualified or be in good standing would not have a material adverse effect on the Company and its subsidiary, taken as a whole; all of the issued shares of capital stock of Aviron UK Limited have been duly and validly authorized and issued, are fully paid and non-assessable and are owned directly by the Company, free and clear of all liens, encumbrances, equities or claims.

(e) This Agreement has been duly authorized, executed and

delivered by the Company.

(f) The authorized capital stock of the Company conforms as to legal matters to the description thereof contained in the Prospectus.

(g) The shares of Common Stock outstanding on the date hereof have been duly authorized and are validly issued, fully paid and non-assessable.

(h) The Indenture related to the Notes has been duly qualified under the Trust Indenture Act and has been duly authorized and, when executed and delivered by the Company, will be a valid and binding agreement of the Company, enforceable in accordance with its terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability.

(i) The Notes have been duly authorized and, when executed and authenticated in accordance with the provisions of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms

of this Agreement will be entitled to the benefits of the Indenture and will be valid and binding obligations of the Company, in each case enforceable in accordance with their respective terms except as (i) the enforceability thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and (ii) rights of acceleration and the availability of equitable remedies may be limited by equitable principles of general applicability.

(j) The Underlying Securities reserved for issuance upon conversion of the Notes have been duly authorized and reserved and, when issued and delivered upon conversion of the Notes in accordance with the terms of the Indenture and the Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Underlying Securities will not be subject to any preemptive or similar rights.

(k) The execution and delivery by the Company of, and the performance by the Company of its obligations under, this Agreement, the Indenture and the Notes will not contravene any provision of applicable law or the certificate of incorporation or by-laws of the Company or any agreement or other instrument binding upon the Company or its subsidiary that is material to the Company and its subsidiary, taken as a whole, or any judgment, order or decree of any governmental body, agency or court having jurisdiction over the Company or its subsidiary, and no consent, approval, authorization or order of, or qualification with, any governmental body or agency is required for the performance by the

Company of its obligations under this Agreement, the Indenture or the Notes, except such as have been obtained under the Securities Act and such as may be required by the securities or Blue Sky laws of the various states in connection with the offer and sale of the Notes.

(l) There has not occurred any material adverse change, or any development involving a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiary, taken as a whole, from that set forth in the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement).

(m) There are no legal or governmental proceedings pending or, to the knowledge of the Company, threatened to which the Company or its subsidiary is a party or to which any of the properties of the Company or its subsidiary is subject that are required to be described in the Registration Statement or the Prospectus and are not so described or any statutes, regulations, contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(n) Each preliminary prospectus filed as part of the registration statement as originally filed or as part of any amendment thereto, or filed pursuant to Rule 424 under the Securities Act, complied when so filed in all material respects with the Securities Act and the applicable rules and regulations of the Commission thereunder.

(o) The Company is not, and after giving effect to the offering and sale of the Notes and the application of the proceeds thereof as described in the Prospectus will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(p) The Company and its subsidiary (i) are in compliance with any and all applicable foreign, federal, state and local laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants ("ENVIRONMENTAL LAWS"), (ii) have received all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses and (iii) are in compliance with all terms and conditions of any such permit, license or approval, except where such noncompliance with Environmental Laws, failure to receive required permits, licenses or other approvals or failure to comply with the terms and conditions of such permits, licenses or approvals would not, singly or in the aggregate, have a material adverse effect on the Company and its subsidiary, taken as a whole.

(q) There are no costs or liabilities associated with

Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a material adverse effect on the Company and its subsidiary, taken as a whole.

(r) The Company and its subsidiary possess all consents, approvals, orders, certificates, authorizations and permits issued by, and have made all declarations and filings with, all appropriate federal, state or foreign governmental or self-regulatory authorities and all courts and other tribunals necessary to conduct their respective businesses and to own, lease, license and use their respective properties in the manner described in the Prospectus, except to the extent that the failure to obtain, possess, or make a declaration or filing would not have a material adverse effect on the Company and its subsidiary, taken as a whole, and the Company and its subsidiary have not received any notice of proceedings relating to the revocation or modification of any such consent, approval, order, certificate, authorization or permit that, singly or in the aggregate, if the subject of any unfavorable decision, ruling or finding, or failure to obtain

or file, would have a material adverse effect on the Company and its subsidiary, taken as a whole, except as described in the Prospectus.

(s) The Company owns or possesses adequate licenses or other rights to use all patents, copyrights, trademarks, service marks, trade names, technology and know-how necessary to conduct its businesses in the manner described in the Prospectus or could obtain such licenses or rights on terms that would not have a material adverse effect on the Company and its subsidiary, taken as a whole, and, except as disclosed in the Prospectus, the Company has not received any notice of infringement with respect to any patents, copyrights, trademarks, service marks, trade names, technology or know-how which could reasonably be expected to result in any material adverse effect on the Company and its subsidiary, taken as a whole; and, except as disclosed in the Prospectus, the discoveries, inventions, products or processes of the Company referred to in the Prospectus do not, to the best knowledge of the Company, infringe any patent or other intellectual property right of any third party, or any discovery, invention, product or process that is the object of a patent application filed by any third party known to the Company, except for any such infringement which would not have a material adverse effect on the Company and its subsidiary, taken as a whole.

(t) There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company except as

described in the Prospectus, all of which have been validly waived.

(u) The Company is not presently (a) in material violation of its charter or bylaws, or (b) subject to any material order, writ or decree applicable specifically to the Company of any court or governmental agency or body having jurisdiction over the Company, or over any of its properties or operations.

2. Agreements to Sell and Purchase. The Company hereby agrees to sell to the several Underwriters, and each Underwriter, upon the basis of the representations and warranties herein contained, but subject to the conditions hereinafter stated, agrees, severally and not jointly, to purchase from the Company the respective principal amounts of Firm Notes set forth in Schedule I hereto opposite its name at 97.0% of their principal amount (the "PURCHASE PRICE") plus accrued interest, if any, from February 7, 2001 to the date of payment and delivery.

On the basis of the representations and warranties contained in this Agreement, and subject to its terms and conditions, the Company agrees to sell to the Underwriters the Additional Notes, and the Underwriters shall have a one-time right to purchase, severally and not jointly, up to $30,000,000 principal

amount of Additional Notes at the Purchase Price plus accrued interest, if any, from February 7, 2001 to the date of payment and delivery. If you, on behalf of the Underwriters, elect to exercise such option, you shall so notify the Company in writing not later than 30 days after the date of this Agreement, which notice shall specify the principal amount of Additional Notes to be purchased by the Underwriters and the date on which such Additional Notes are to be purchased. Such date may be the same as the Closing Date (as defined below) but not earlier than the Closing Date nor later than ten business days after the date of such notice. Additional Notes may be purchased as provided in Section 4 hereof solely for the purpose of covering over-allotments made in connection with the offering of the Firm Notes. If any Additional Notes are to be purchased, each Underwriter agrees, severally and not jointly, to purchase the principal amount of Additional Notes (subject to such adjustments to eliminate fractional securities as you may determine) that bears the same proportion to the total principal amount of Additional Notes to be purchased as the principal amount of Firm Notes set forth in Schedule I hereto opposite the name of such Underwriter bears to the total principal amount of Firm Notes.

The Company hereby agrees that, without the prior written consent of Morgan Stanley & Co. Incorporated on behalf of the Underwriters, it will not, during the period ending 90 days after the date of the Prospectus Supplement, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (ii) enter into any swap or

other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (A) the Notes to be sold hereunder or the issuance of the underlying securities upon conversion of such notes, (B) the issuance by the Company of shares of Common Stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date hereof, (C) the grant by the Company of options to purchase Common Stock pursuant to the terms of an employee benefit plan in effect on the date hereof or exercise of stock options outstanding on the date hereof or (D) the sale of shares of Common Stock to be sold pursuant to an underwriting agreement dated the date hereof among the Company, the selling stockholders named therein and the underwriters named therein.

3. Terms of Public Offering. The Company is advised by you that the Underwriters propose to make a public offering of their respective portions of the Notes as soon after the Registration Statement and this Agreement have become effective as in your judgment is advisable. The Company is further advised by you that the Notes are to be offered to the public initially at 100% of their principal amount (the "PUBLIC OFFERING PRICE") plus accrued interest, if any, from February 7, 2001 to the date of payment and delivery and to certain dealers

selected by you at a price that represents a concession not in excess of 1.8% of their principal amount. No Underwriter may allow, and no dealer may reallow, a concession to any Underwriter or dealer.

4. Payment and Delivery. Payment for the Firm Notes shall be made to the Company in Federal or other funds immediately available in New York City at 10:00 a.m., New York City time, on February 7, 2001, or at such other time on the same or such other date, not later than February 14, 2001, as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "CLOSING DATE."

Payment for any Additional Notes to be sold by the Company shall be made to the Company in Federal or other funds immediately available in New York City at 10:00 a.m., New York City time, on the date specified in the notice described in Section 2 or at such other time on the same or on such other date, in any event not later than March 16, 2001 as shall be designated in writing by you. The time and date of such payment are hereinafter referred to as the "OPTION CLOSING DATE."

Payment for the Firm Notes and Additional Notes shall be made against delivery to you on the Closing Date or the Option Closing Date, as the case may be, for the respective accounts of the several Underwriters of the Firm Notes and Additional Notes registered in such names and in such denominations as you shall request in writing not less than one full business day prior to the Closing Date or the Option Closing Date, as the case may be, with any transfer

taxes payable in connection with the transfer of the Notes to the Underwriters duly paid.

5. Conditions to the Underwriters' Obligations. The obligations of the Company to sell the Notes to the Underwriters and the several obligations of the Underwriters to purchase and pay for the Notes on the Closing Date are subject to the condition that the Registration Statement shall have become effective not later than 4:30 p.m. (New York City time) on the date hereof.

The several obligations of the Underwriters are subject to the following further conditions:

(a) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date:

(i) there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities by any "nationally recognized statistical rating organization," as such term is defined for purposes of Rule 436(g)(2) under the Securities Act; and

(ii) there shall not have occurred any change, or any development involving a prospective change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company and its subsidiary, taken as a whole, from that set forth in the Prospectus (exclusive of any amendments or supplements thereto subsequent to the date of this Agreement) that, in your judgment, is material and adverse and that makes it, in your judgment, impracticable to market the Notes on the terms and in the manner contemplated in the Prospectus.

(b) The Underwriters shall have received on the Closing Date a certificate, dated the Closing Date and signed by an executive officer of the Company, to the effect set forth in Section 5(a)(i) above and to the effect that the representations and warranties of the Company contained in this Agreement are true and correct as of the Closing Date and that the Company has complied with all of the agreements and satisfied all of the conditions on its part to be performed or satisfied hereunder on or before the Closing Date.

The officer signing and delivering such certificate may rely upon the best of his or her knowledge as to proceedings threatened.

(c) The Underwriters shall have received on the Closing Date an opinion of Latham & Watkins, outside counsel for the Company, dated the Closing Date, to the effect that:

(i) the Company is a corporation and is validly existing and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and corporate authority to own its properties and to conduct its business as described in the Prospectus;

(ii) the Company is qualified to do business in the states of California and Pennsylvania;

(iii) this Agreement has been duly authorized, executed and delivered by the Company;

(iv) the Indenture has been duly qualified under the Trust Indenture Act and has been duly authorized, executed and delivered by Company, and (assuming due authorization, execution and delivery by the Trustee) is a legally valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except (i) as enforceability may be limited by the effects of applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and equitable principles of law of general

applicability, (ii) as to the enforceability of provisions providing for indemnity or contribution, which may be contrary to public policy, and (iii) as to the enforceability of the waiver of rights or defenses contained in Section 4.4 of the Indenture;

(v) the Underlying Securities initially issuable upon conversion of the Notes have been duly authorized and reserved for issuance upon conversion of the notes and are, to such counsel's knowledge, free of any preemptive rights arising under the Company's certificate of incorporation or the Delaware General Corporation Law and, when issued upon conversion of the Notes in accordance with the terms of the Indenture, will be validly issued, fully paid and non-assessable;

(vi) the Notes have been duly authorized by the Company and, when executed and authenticated in accordance with the terms of the Indenture and delivered to and paid for by the Underwriters in accordance with the terms of this Agreement, will be legally valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except (i) as enforceability may be limited by the effects of applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and equitable principles of law of general applicability, (ii) as to the enforceability of provisions providing for indemnity or contribution, which may be contrary to public policy, and (iii)

as to the enforceability of the waiver of rights or defenses contained in Section 4.4 of the Indenture;

(vii) the issuance and sale of the Notes by the Company of pursuant to this Agreement will not result in (A) the violation by the Company of its Certificate of Incorporation or By-laws, (B) to such counsel's knowledge, the violation of any federal or California statute, rule or regulation known to such counsel to be applicable to the Company or (C) to such counsel's knowledge, the breach of or a default under any material agreement or other instrument binding upon the Company or its subsidiary that has been filed as an exhibit to the Registration Statement or the Resale Registration Statement, or, to such counsel's knowledge, any order listed on a schedule to such opinion;

(viii) no consent, approval, authorization or order of, or filing with, any federal or California court or governmental body or agency is required for the issuance and sale of the Notes pursuant to this Agreement, except such as have been obtained under the Securities Act and such as may be required under state securities laws in connection with the purchase and distribution of the Notes by the Underwriters;

(ix) the statements (A) in the Prospectus under the captions "Description of Debt Securities", "Description of Notes" and "Description of Capital Stock" and (B) in the Registration Statement and the Resale Registration Statement in Item 15 under the caption "Indemnification of Directors and Officers", insofar as such statements constitute summaries of legal matters, are accurate in all material respects;

(x) to such counsel's knowledge, there are no legal proceedings, contracts or documents of a character required to be described in the Registration Statement, the Resale Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement or the Resale Registration Statement that are not described or filed as required;

(xi) after giving effect to the Company's offering and sale of the Notes and the application of the net proceeds therefrom, the Company is not an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(xii) the Registration Statement and the Prospectus (including the documents incorporated therein by reference) comply as to form in all material respects with the requirements for registration statements on Form S-3 under the Securities Act and the rules and regulations of the Commission thereunder; provided, however, that such counsel need not express any opinion with respect to the financial statements, schedules or other financial

or statistical data included or incorporated by reference in, or omitted from, the Registration Statement or the Prospectus or with respect to the Form T-1.

(xiii) no facts have come to such counsel's attention that caused such counsel to believe that the Registration Statement at the time it became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus (including the documents incorporated therein by reference), as of its date or as of the date hereof, contained an untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; it being understood that such counsel expresses no opinion with respect to the financial statements, schedules and other financial and statistical data included or incorporated by reference in, or omitted from, the Registration Statement, the Prospectus, or with respect to the Form T-1.

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(d) The Underwriters shall have received on the Closing Date an opinion of Pennie and Edmonds, patent counsel for the Company as to Section A of the Patent Portfolio attached hereto as Exhibit B (the "PATENT PORTFOLIO"), dated the Closing Date, to the effect that:

(i) to the best of such counsel's knowledge, the Company owns each of the United States patents and patent applications listed in Section A of the Patent Portfolio;

(ii) to the best of such counsel's knowledge, there are no material legal or governmental proceedings, pending or threatened, with respect to any of the United States patents listed in Section A of the Patent Portfolio;

(iii) to the best of such counsel's knowledge, the Company has not received any notice with respect to the potential infringement of or proceedings against any patents or trade secrets of others;

(iv) to the best of such counsel's knowledge, without any searches having been conducted for the purpose of rendering this opinion, no third parties are infringing any of the United States patents listed in Section A of the Patent Portfolio;

(v) while there can be no guarantee that any particular patent application will issue as a patent, each of the United States patent applications listed in Section A of the Patent

Portfolio that we filed in the United States Patent and Trademark Office was properly filed and is being diligently prosecuted in, the United States Patent and Trademark Office;

(vi) while there can be no guarantee that any particular patent application will issue as a patent, each of the United States patent applications listed in Section A of the Patent Portfolio that we did not file in the United States Patent and Trademark Office, from the time we assumed responsibility for the prosecution, is being diligently prosecuted in the United States Patent and Trademark Office; and

(vii) the statements contained in the Prospectus under the caption "Business - Legal Proceedings," with respect to the first paragraph thereunder regarding proceedings before the European Patent Office, insofar as such statements constitute matters of law, are a fair and accurate summary of the matters set forth therein.

(e) The Underwriters shall have received on the Closing Date an opinion of Marshall O'Toole Gerstein Murray & Borun, patent counsel

for the Company as to Section B of the Patent Portfolio, dated the Closing Date, to the effect that:

(i) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, except as otherwise disclosed in the Prospectus, there are no legal or governmental proceedings relating to patent rights owned, licensed, or used by the Company pending against the Company or any third parties and, except for prosecution of the Company's pending patent applications, to the best of such counsel's knowledge, there are no legal or governmental proceedings relating to patent rights owned, licensed or used by third parties pending against the Company. To the best of such counsel's knowledge, other than those disclosed in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or others;

(ii) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company has no notice of any infringement by a third party of any patent owned or used by the Company; and to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company has not received notice of any claims of infringement by the Company of any patent owned or used by a third party;

(iii) to the best of such counsel's knowledge, such

knowledge being based upon the files of such firm, the Company or one of its licensors is the sole assignee for each patent and patent application listed in Section B of the Patent Portfolio. To the best of such counsel's knowledge, the assignments by the named inventors have been submitted to the USPTO and those assignments have been recorded in the assignment records of the USPTO. However, in one or more of the patents and patent applications listed in Section B of the Patent Portfolio, the United States government may hold a nonexclusive, royalty-free license as a result of providing research funding;

(iv) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, the Company's United States patent applications listed in Section B of the Patent Portfolio have been prepared and filed in the USPTO in a form and with accompanying papers that are acceptable to the USPTO for the purposes of according each such application a filing date and serial number, and of placing each such application in condition for eventual examination on the merits as to patentability. For each such United States application, except as otherwise noted in

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Exhibit B attached to this opinion, an Official Filing Receipt has been received from the USPTO. As to each of such applications, such counsel is not aware of any material defect of form in preparation or filing. However, there is no assurance that patents will issue from any pending United States application, or that any claims will be allowed without amendment. Neither is there any assurance that a patent will issue without appeal to the Board of Patent Appeals and Interferences or to the Federal courts;

(v) to the best of such counsel's knowledge, such knowledge being based upon the files of such firm, each of the Company's foreign patents and patent applications listed in Section B of the Patent Portfolio has been submitted to patent firms in the respective foreign countries with instructions to file the applications in the patent offices of those countries naming the Company or one its licensors as applicant and/or owner of record. The Patent Cooperation Treaty applications have been submitted directly to the relevant patent examining authority of those countries naming the Company or one of its licensors as the applicant and/or owner of record. In each such application, written confirmation has been received that the application has been accepted for filing by such patent office, or patent examining authority. There is no assurance that the patent offices of the respective countries will not reject the claims of the foreign patent applications as being unpatentable, or that any claims will be allowed without amendment, nor is there any assurance that these patent authorities will

ultimately conclude that the foreign patent applications meet all requirements for patentability. Such counsel is not aware of any material defect of form in preparation or filing. To the best of such counsel's knowledge, other than two oppositions filed in the European Patent Office against European Patent No. 500,917 corresponding to Marshall O'Toole reference No. 27373/8235-EPO as listed in Section B of the Patent Portfolio, there are no legal or governmental proceedings relating to any foreign patent rights or foreign parent applications owned, licensed or used by the Company pending against the Company or any third party and, except for prosecution of pending patent applications, to the best of such counsel's knowledge, there are no legal or governmental proceedings relating to any foreign patent rights of foreign patent applications owned, licensed or used by third parties pending against Aviron. To the best of such counsel's knowledge, other than otherwise disclosed in the Prospectus, no such proceedings are threatened or contemplated by governmental authorities or others; and

(vi) the patent applications in Section B of the Patent Portfolio are being diligently pursued.

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(f) The Underwriters shall have received on the Closing Date an opinion of the Law Office of LuAnn Cserr, outside patent counsel for the Company as to Section C of the Patent Portfolio, dated the Closing Date to the effect that:

(i) except as disclosed in the Prospectus under the captions "Risk Factors - Other Risks Related to Our Company - We may not receive patent protection for our potential products and manufacturing processes" and "Business - Legal Proceedings," to the best of such counsel's knowledge, the Company has received no notice of any infringement or misappropriation by a third party of any patent in Section C of the Patent Portfolio or notice of any infringement or misappropriation by the Company of any patents, trade secrets, trademarks, trade names, copyrights or other proprietary rights of a third party;

(ii) except as disclosed in the Prospectus under the captions "Risk Factors - Other Risks Related to Our Company - We may not receive patent protection for our potential products and manufacturing processes" and "Business - Legal Proceedings," to the best of such counsel's knowledge, the Company or its licensor is the sole assignee for each United States patent and patent application listed in Section C of the Patent Portfolio. Except as otherwise noted in Section C of the Patent Portfolio attached hereto, for each of the United States patents and patent applications, the assignments by the named inventors have been submitted to the United States Patent and Trademark Office

("USPTO") and those assignments have been recorded in the Patent Office's title records. However, in one or more of the patents and patent applications listed in Section C of the Patent Portfolio, the United States government may hold a nonexclusive, royalty-free license as a result of providing research funding;

(iii) to such counsel's knowledge, the Company's United States patent applications listed in Section C of the Patent Portfolio have been prepared and filed in the USPTO in a form and with accompanying papers that are acceptable to the USPTO for the purposes of according each such application a filing date and serial number, and of placing each such application in condition for eventual examination on the merits as to patentability. For each such United States patent application, such counsel is not aware of any material defect of form in preparation or filing;

(iv) to such counsel's knowledge, except as disclosed in the Prospectus, as to each of the Company's foreign patent applications listed in Section C of the Patent Portfolio, the applications have either (a) been submitted to patent firms in the

respective foreign countries with instructions to file the applications in the patent offices of those countries naming the Company as the applicant of record, or (b) as to certain Patent Cooperation Treaty applications, been submitted directly to the relevant receiving office naming the Company as the applicant of record. To the best of such counsel's knowledge and except as noted in Section C of the Patent Portfolio, as to each of such applications, the Company has not received notice from any foreign filing authority of any material defect of form in the preparation or filing; and

(g) The Underwriters shall have received on the Closing Date an opinion of Latham & Watkins, U.K. counsel for the Company, dated the Closing Date, to the effect that:

(i) Aviron UK Limited is duly incorporated and existing as a private limited company registered in England and Wales under company number 3854275 and is authorised pursuant to its Memorandum of Association to carry on its current business and to occupy its current premises. Aviron UK Limited is in good standing as shown by the Certificate of Good Standing received from the Registrar of Companies; and

(ii) the authorised share capital of Aviron UK Limited of 1000 is Pound Sterling1000 divided into 1000 ordinary shares of Pound Sterling1 each of which 1 share has been validly issued and is fully paid up. Aviron is the registered owner of the only

issued ordinary share of Pound Sterling1 in the capital of Aviron UK Limited, free and clear of all liens, encumbrances, equities or claims.

(h) The Underwriters shall have received on the Closing Date an opinion of Davis Polk & Wardwell, counsel for the Underwriters, dated the Closing Date, covering the matters referred to in Sections 5(c)(iii), 5(c)(iv), 5(c)(vi), 5(c)(ix) (but only as to the statements in the Prospectus under "Description of Debt Securities," "Description of the Notes" and "Underwriters") and 5(c)(xii) and 5(c)(xiii) above.

With respect to Section [5(c)(xiv)] above, Latham & Watkins and Davis Polk & Wardwell may state that their opinion and belief are based upon their participation in the preparation of the Registration Statement and Prospectus and any amendments or supplements thereto (other than the documents incorporated by reference) and review and discussion of the contents thereof (including the documents incorporated therein by reference), but are without independent check or verification, except as specified.

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The opinions of Latham & Watkins, Pennie and Edmonds, Marshall O'Toole Gerstein Murray & Borun and the Law Offices of LuAnn Cserr described in Sections 5(c), 5(d), 5(e), 5(f) and 5(g) above shall be rendered to the Underwriters at the request of the Company and shall so state therein.

(i) The Underwriters shall have received, on each of the date hereof, the Closing Date and, if applicable, the Option Closing Date, a letter dated the date hereof, the Closing Date or the Option Closing Date, as the case may be, in form and substance satisfactory to the Underwriters, from Ernst & Young LLP, independent public accountants, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained in the Registration Statement and the Prospectus; provided that the letter delivered on the Closing Date shall use a "cut-off date" not earlier than the date hereof.

(j) The "lock-up" agreements, each substantially in the form of Exhibit A hereto (collectively, the "LOCK-UP AGREEMENTS"), between you and the officers and directors of the Company relating to sales and certain other dispositions of shares of Common Stock or certain other securities, delivered to you on or before the date hereof, shall be in full force and effect on the Closing Date.

The several obligations of the Underwriters to purchase Additional Notes hereunder are subject to the delivery to you on the Option Closing Date of such documents as you may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Notes and other

matters related to the issuance of the Additional Notes.

6. Covenants of the Company. In further consideration of the agreements of the Underwriters herein contained, the Company covenants with each Underwriter as follows:

(a) To furnish to you, without charge, four signed copies of the Registration Statement (each including exhibits thereto and documents incorporated therein by reference) and for delivery to each other Underwriter a conformed copy of the Registration Statement (each without exhibits thereto but including documents incorporated therein by reference) and to furnish to you, without charge, on the business day next succeeding the date of this Agreement and during the period mentioned in Section 6(c) below, as many copies of the Prospectus and any supplements and amendments thereto or to the Registration Statement as you may reasonably request.

(b) Before amending or supplementing the Registration Statement or the Prospectus, to furnish to you a copy of each such

proposed amendment or supplement and not to file any such proposed amendment or supplement to which you reasonably object, and to file with the Commission within the applicable period specified in Rule 424(b) under the Securities Act any prospectus required to be filed pursuant to such Rule.

(c) If, during such period after the first date of the public offering of the Notes as in the opinion of counsel for the Underwriters the Prospectus is required by law to be delivered in connection with sales of Notes by an Underwriter or dealer, any event shall occur or condition exist as a result of which it is necessary to amend or supplement the Prospectus in order to make the statements therein, in the light of the circumstances when the Prospectus is delivered to a purchaser, not misleading, or if, in the opinion of counsel for the Underwriters, it is necessary to amend or supplement the Prospectus to comply with applicable law, forthwith to prepare, file with the Commission and furnish, at its own expense, to the Underwriters and to the dealers (whose names and addresses you will furnish to the Company) to which Notes may have been sold by you on behalf of the Underwriters and to any other dealers upon request, either amendments or supplements to the Prospectus so that the statements in the Prospectus as so amended or supplemented will not, in the light of the circumstances when the Prospectus is delivered to a purchaser, be misleading or so that the Prospectus, as amended or supplemented, will comply with law.

(d) To endeavor to qualify the Notes for offer and sale under the securities or Blue Sky laws of such jurisdictions as you shall reasonably request.

(e) To make generally available to the Company's security holders and to you as soon as practicable an earning statement covering the twelve-month period ending March 31, 2002 that satisfies the provisions of Section 11(a) of the Securities Act and the rules and regulations of the Commission thereunder.

(f) Whether or not the transactions contemplated in this Agreement are consummated or this Agreement is terminated, to pay or cause to be paid all expenses incident to the performance of its obligations under this Agreement, including: (i) the fees, disbursements and expenses of the Company's counsel and the Company's accountants in connection with the registration and delivery of the Notes under the Securities Act and all other fees or expenses in connection with the preparation and filing of the Registration Statement, any preliminary prospectus, the Prospectus and amendments and supplements to any of the foregoing, including all printing costs associated therewith, and the mailing and delivering of copies thereof to the Underwriters and dealers, in the quantities hereinabove specified, (ii) all costs and expenses related to the transfer and

delivery of the Notes to the Underwriters, including any transfer or other taxes payable thereon, (iii) the cost of printing or producing any Blue Sky or Legal Investment memorandum in connection with the offer and sale of the Notes under state securities laws and all expenses in connection with the qualification of the Notes for offer and sale under state securities laws as provided in Section 6(d) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Underwriters in connection with such qualification and in connection with the Blue Sky or Legal Investment memorandum, (iv) all filing fees and the reasonable fees and disbursements of counsel to the Underwriters incurred in connection with the review and qualification of the offering of the Notes by the National Association of Securities Dealers, Inc., (v) all costs and expenses incident to listing the Underlying Securities on the Nasdaq National Market (if any), (vi) the costs and charges of any transfer agent, registrar or depositary, (vii) the costs and expenses of the Company relating to investor presentations on any "road show" undertaken in connection with the marketing of the offering of the Notes, including, without limitation, expenses associated with the production of road show slides and graphics, fees and expenses of any consultants engaged in connection with the road show presentations with the prior approval of the Company, travel and lodging expenses of the representatives and officers of the Company and any such consultants, and the cost of any aircraft chartered in connection with the road show, and (viii) all other costs and expenses incident to the performance of the obligations of the Company hereunder for which provision is not otherwise made in this Section. It is understood, however, that except as provided in this Section, Section 7 entitled "Indemnity and Contribution," and the last paragraph of Section 9 below, the Underwriters will pay all of their costs and expenses, including fees

and disbursements of their counsel, stock transfer taxes payable on resale of any of the Notes by them and any advertising expenses connected with any offers they may make.

(g) To issue stop-transfer instructions to the transfer agent for the Common Stock with respect to any transaction or contemplated transaction that would constitute a breach of or default under the applicable Lock-up Agreement.

7. Indemnity and Contribution. (a) The Company agrees to indemnify and hold harmless each Underwriter and each person, if any, who controls any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or

supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Underwriter furnished to the Company in writing by such Underwriter through you expressly for use therein; provided that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any Underwriter from whom the person asserting any such losses, claims, damages or liabilities purchased Notes, or any person controlling such Underwriter, if a copy of the Prospectus (as then amended or supplemented if the Company shall have furnished any amendments or supplements thereto) was not sent or given by or on behalf of such Underwriter to such person, if required by law so to have been delivered, at or prior to the written confirmation of the sale of the Notes to such person, and if the Prospectus (as so amended or supplemented) would have cured the defect giving rise to such losses, claims, damages or liabilities, unless such failure is the result of noncompliance by the Company with Section 6(a) hereof.

(b) Each Underwriter agrees, severally and not jointly, to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or

supplemented if the Company shall have furnished any amendments or supplements thereto), or caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Underwriter furnished to the Company in writing by such Underwriter through you expressly for use in the Registration Statement, any preliminary prospectus, the Prospectus or any amendments or supplements thereto.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 7(a) or 7(b), such person (the "INDEMNIFIED PARTY") shall promptly notify the person against whom such indemnity may be sought (the "INDEMNIFYING PARTY") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel

related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for (i) the fees and expenses of more than one separate firm (in addition to any local counsel) for all Underwriters and all persons, if any, who control any Underwriter within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and (ii) the fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act. In the case of any such separate firm for the Underwriters and such control persons of any Underwriters, such firm shall be designated in writing by Morgan Stanley & Co. Incorporated. In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and

against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this paragraph, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

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(d) To the extent the indemnification provided for in Section 7(a) or 7(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Notes or (ii) if the allocation provided by clause 7(d)(i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 7(d)(i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other hand in connection with the offering of the Notes shall be deemed to be in the same respective proportions as the net proceeds from the offering of the Notes (before deducting expenses) received by the Company and the total underwriting discounts and commissions received by the Underwriters, in each case as set forth in the table on the cover of the Prospectus, bear to the aggregate Public Offering Price of the Notes. The relative fault of the Company on the one hand and the Underwriters on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Underwriters' respective obligations to

contribute pursuant to this Section 7 are several in proportion to the respective principal amount of Notes they have purchased hereunder, and not joint.

(e) The Company and the Underwriters agree that it would not be just or equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in Section 7(d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages and liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 7, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Notes underwritten by it and

distributed to the public were offered to the public exceeds the amount of any damages that such Underwriter has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(f) The indemnity and contribution provisions contained in this Section 7 and the representations, warranties and other statements of the Company contained in this Agreement shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Underwriter or any person controlling any Underwriter or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) acceptance of and payment for any of the Notes.

8. Termination. This Agreement shall be subject to termination by notice given by you to the Company, if (a) after the execution and delivery of this Agreement and prior to the Closing Date (i) trading generally shall have been suspended or materially limited on or by, as the case may be, any of the New York Stock Exchange, the American Stock Exchange, the National Association of Securities Dealers, Inc., the Chicago Board of Options Exchange, the Chicago Mercantile Exchange or the Chicago Board of Trade, (ii) trading of any securities of the Company shall have been suspended on any exchange or in any over-the-counter market, (iii) a general moratorium on commercial banking activities in New York shall have been declared by either Federal or New York State authorities or (iv) there shall have occurred any outbreak or escalation

of hostilities or any change in financial markets or any calamity or crisis that, in your judgment, is material and adverse and (b) in the case of any of the events specified in clauses (8)(a)(i) through 8(a)(iv), such event, singly or together with any other such event, makes it, in your judgment, impracticable to market the Notes on the terms and in the manner contemplated in the Prospectus.

9. Effectiveness; Defaulting Underwriters. This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

If, on the Closing Date or the Option Closing Date, as the case may be, any one or more of the Underwriters shall fail or refuse to purchase Notes that it has or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Notes which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of the Notes to be purchased on such date, the other Underwriters shall be obligated severally in the proportions that the principal amount of Firm Notes set forth opposite their respective names in Schedule I

bears to the aggregate principal amount of Firm Notes set forth opposite the names of all such non-defaulting Underwriters, or in such other proportions as you may specify, to purchase the Notes which such defaulting Underwriter or Underwriters agreed but failed or refused to purchase on such date; provided that in no event shall the principal amount of Notes that any Underwriter has agreed to purchase pursuant to this Agreement be increased pursuant to this Section 9 by an amount in excess of one-ninth of such principal amount of Notes without the written consent of such Underwriter. If, on the Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Firm Notes and the aggregate principal amount of Firm Notes with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Firm Notes to be purchased, and arrangements satisfactory to you and the Company for the purchase of such Firm Notes are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of any non-defaulting Underwriter or the Company. In any such case either you or the Company shall have the right to postpone the Closing Date, but in no event for longer than seven days, in order that the required changes, if any, in the Registration Statement and in the Prospectus or in any other documents or arrangements may be effected. If, on the Option Closing Date, any Underwriter or Underwriters shall fail or refuse to purchase Additional Notes and the aggregate principal amount of Additional Notes with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Additional Notes to be purchased, the non-defaulting Underwriters shall have the option to (i) terminate their obligation hereunder to purchase Additional Notes or (ii) purchase not less than the principal amount of Additional Notes that such non-defaulting Underwriters would have been obligated to purchase in the absence of such default. Any action taken under this paragraph shall not relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

If this Agreement shall be terminated by the Underwriters, or any of

them, because of any failure or refusal on the part of the Company to comply with the terms or to fulfill any of the conditions of this Agreement, or if for any reason the Company shall be unable to perform its obligations under this Agreement, the Company will reimburse the Underwriters or such Underwriters as have so terminated this Agreement with respect to themselves, severally, for all out-of-pocket expenses (including the fees and disbursements of their counsel) reasonably incurred by such Underwriters in connection with this Agreement or the offering contemplated hereunder.

10. Counterparts. This Agreement may be signed in two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York.

12. Headings. The headings of the sections of this Agreement have been inserted for convenience of reference only and shall not be deemed a part of this Agreement.

Very truly yours,

AVIRON

By:

Name:
Title:

Accepted as of the date hereof

MORGAN STANLEY & CO. INCORPORATED
CHASE SECURITIES INC.
SG COWEN SECURITIES CORPORATION

Acting severally on behalf of themselves and
the several Underwriters named in
Schedule I hereto.

By: Morgan Stanley & Co. Incorporated

By:

Name:
Title:

SCHEDULE I

<TABLE>
<CAPTION>

UNDERWRITER	PRINCIPAL AMOUNT OF FIRM NOTES TO BE PURCHASED
<S>	<C>
Morgan Stanley & Co. Incorporated.....	$120,000,000
Chase Securities Inc.....	40,000,000
SG Cowen Securities Corporation.....	40,000,000
Total:.....	$200,000,000

</TABLE>

EXHIBIT A

[FORM OF LOCK-UP LETTER]

_____, 2001

Morgan Stanley & Co. Incorporated
Chase Securities Inc.
SG Cowen Securities Corporation
c/o Morgan Stanley & Co. Incorporated
1585 Broadway
New York, NY 10036

Dear Sirs and Mesdames:

The undersigned understands that Morgan Stanley & Co. Incorporated ("MORGAN STANLEY") proposes to enter into an Underwriting Agreement (the "UNDERWRITING AGREEMENT") with Aviron, a Delaware corporation (the "COMPANY"), providing for the public offering (the "PUBLIC OFFERING") by the several Underwriters, including Morgan Stanley (the "UNDERWRITERS"), of its Convertible Subordinated Notes due 2008 (the "NOTES"). The Notes will be convertible into shares of common stock, par value $0.001 per share, of the Company (the "COMMON STOCK").

To induce the Underwriters that may participate in the Public Offering to continue their efforts in connection with the Public Offering, the undersigned hereby agrees that, without the prior written consent of Morgan Stanley on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 90 days after the date of the final prospectus supplement relating to the Public Offering (the "PROSPECTUS"), (1) offer,

pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable for Common Stock or (2) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (a) the sale of any shares of Common Stock to the Underwriters pursuant to the concurrent offering of Common Stock, (b) transactions relating to shares of Common Stock or other securities acquired in open market transactions after the completion of the Public Offering and (c) transfers of shares of Common Stock or any security convertible into Common Stock as a bona fide gift or gifts; provided that in the case of any transfer pursuant to clause (c), (i) each donee shall execute and deliver to Morgan Stanley a duplicate form of this lock-up agreement and (ii) no filing by any party (donor, donee, transferor or transferee) under Section 16(a) of the Securities Exchange

Act of 1934, as amended, shall be required or shall be made voluntarily in connection with such transfer (other than a filing on a Form 5 made after the expiration of the 90-day period referred to above). In addition, the undersigned agrees that, without the prior written consent of Morgan Stanley on behalf of the Underwriters, it will not, during the period commencing on the date hereof and ending 90 days after the date of the Prospectus, make any demand for or exercise any right with respect to, the registration of any shares of Common Stock or any security convertible into or exercisable or exchangeable for Common Stock. The undersigned also agrees and consents to the entry of stop transfer instructions with the Company's transfer agent and registrar against the transfer of the undersigned's shares of Common Stock except in compliance with the foregoing restrictions.

The undersigned understands that the Company and the Underwriters are relying upon this lock-up agreement in proceeding toward consummation of the Public Offering. The undersigned further understands that this lock-up agreement is irrevocable and shall be binding upon the undersigned's heirs, legal representatives, successors and assigns.

Whether or not the Public Offering actually occurs depends on a number of factors, including market conditions. Any Public Offering will only be made pursuant to an Underwriting Agreement, the terms of which are subject to negotiation between the Company and the Underwriters. This agreement will terminate if the Underwriting Agreement has not been executed on or before June 1, 2001 or if the Company notifies you (with the prior written consent of Morgan Stanley, such consent not to be unreasonably withheld) that it does not intend to proceed with the Public Offering.

Very truly yours,

(Name)

(Address)

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EXHIBIT B

PATENT PORTFOLIO

SECTION A - (PENNIE & EDMONDS)

<TABLE>
<CAPTION>

P&E DOCKET NO.	P&E DOCKET NO.
<S>	<C>
7682-0010	7682-0025
7682-0021	7682-0048
7682-0035	7682-0045
7682-0036	7682-0047
7682-0034	7682-0049
7682-0044	7682-0039
7682-0019	7682-0038
7682-0037	7682-0050
7682-0051	7682-0052
7682-0053	7682-0054
7682-0055	

</TABLE>

31

EXHIBIT B (Cont'd)

SECTION B - (MARSHALL O'TOOLE)

<TABLE>
<CAPTION>

MARSHALL DOCKET NO.	MARSHALL DOCKET NO.

<S>	<C>
28097/32325	27373/32742
27373/32908	27373/32742A
27373/0001	27373/31916
27373/0003	27373/0002F
27373/8235	27373/0002E
27373/31746CA	28097/33309
27373/31746JP	27373/0002B
27373/32908CA	27373/0002D
27373/32908JP	27373/31746EPO
27373/8235JP	27373/32908EPO
27373/0001EPO	27373/8235CA
27373/0002EPO	27373/31746AU
27373/0002AJP	27373/0001CA
27373/0003EPO	27373/0002JP
27373/0003JP	27373/0003AU
27373/8235AU	27373/0003CA
27373/31011KR	27373/0003ZA
	27373/8235EPO

</TABLE>

EXHIBIT B (Cont'd)

SECTION C - (LAW OFFICES OF LUANN CSERR)

AVIRON REFERENCE NO.

5016
5016.1
5016.2
5018 IN
5018 MY
5019
5019.1
5019.2
5019.3
5019 PCT
5019 AU
5019 CA
5019 EP
5019 JP
5021
5021.1
5021.2
5021 PCT
5021 AU
5021 CA
5021 EP

5021 JP
5021 SK
5022
5022.1
5023.1
5023 PCT
AV 9801 US

EXHIBIT 4.1

AVIRON

$230,000,000 5 1/4% Convertible Subordinated Notes due 2008

Officer's Certificate Pursuant to Section 2.01 of Indenture

The undersigned officers of Aviron, a Delaware corporation (the "Company"), pursuant to authority granted such officers pursuant to resolutions duly adopted at a meeting of the Board of Directors of the Company on November 30, 2000 and resolutions duly adopted at a meeting of the Pricing Committee of the Board of Directors of the Company on February 1, 2001 (collectively, the "Resolutions"), hereby establish a series of Securities under that certain Indenture, dated as of _____, 2001 (the "Indenture"), between the Company and HSBC Bank USA, as trustee ("Trustee"), which Securities are designated "5 1/4% Convertible Subordinated Notes due 2008," and hereby certify, pursuant to Sections 2.1 and 2.2 of the Indenture, as follows:

1. Form of Note. Attached hereto as Exhibit A is a true and correct copy of a specimen Note (the "Form of Note") representing the Company's 5 1/4% Convertible Subordinated Notes due 2008 (the "Notes").

2. Terms of the Notes. The terms of the Notes are as follows:

(a) The title of the Notes to be issued as a series of Securities (as defined in the Indenture) under the Indenture shall be the "5 1/4% Convertible Subordinated Notes due 2008";

(b) The aggregate principal amount of the Notes that may be authenticated and delivered under the Indenture shall be limited to $230,000,000 (except for Notes authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Notes pursuant to Article II and Section 9.6 of the Indenture);

(c) The Notes shall be issued at a price equal to 5 1/4% of the aggregate principal amount thereof;

(d) The principal of the Notes shall be payable on February 1, 2008;

(e) The Notes shall bear interest at a rate equal to 5 1/4% per annum; interest on the Notes shall accrue from February __, 2001 or from the most recent interest payment date to which interest has been paid or provided for, as the case may be; interest on the Notes shall be payable semi-annually in arrears in cash on February 1 and August 1 of each year until maturity commencing on August 1, 2001; and interest on the Notes shall be payable to holders of record on the January 15 or July 15 immediately preceding the applicable interest payment date;

(f) The place or places where the principal of and any interest in the Notes shall be payable shall be as set forth in the Notes, the form of which is attached hereto as Exhibit A;

(g) The Notes shall be subject to redemption, in whole or in part, at the option of the Company at any time on or after February 5,

2004, at the redemption prices (expressed in percentages of principal amount) set forth below plus accrued and unpaid interest thereon to, but excluding, the redemption date:

<TABLE>
<CAPTION>

Period	Redemption Price
<S>	<C>
Beginning on February 5, 2004 and ending on January 31, 2005.....	103.000%
Beginning on February 1, 2005 and ending on January 31, 2006.....	102.250%
Beginning on February 1, 2006 and ending on January 31, 2007.....	101.500%
Beginning on February 1, 2007 and ending on January 31, 2008.....	100.750%
February 1, 2008 and thereafter.....	100.00%

</TABLE>

The Company may not so redeem Securities if the Company has failed to pay any interest on the Securities when due and such failure to pay is continuing. If the redemption date is an interest payment date, interest shall be paid to the record holder of the relevant record date.

(h) The Company shall not be obligated to redeem or purchase the Notes pursuant to any sinking fund or at the option of any holder thereof prior to maturity;

(i) The Company shall be convertible into shares of Common Stock, par value $.001 per share, of the Company at any time prior to maturity at an initial conversion price of $62.50 per share of Common Stock, subject to adjustment as described below;

(j) The Notes shall be issued in denominations of $1,000 and any integral multiple thereof;

(k) 100% of the principal amount thereof shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.2 of the Indenture;

(l) In addition to the definitions and provisions set forth in the Indenture, the Notes shall include the definitions and provisions set forth in Sections 3, 4 and 5 of this Officers' Certificate and, in the case of conflict, the definitions and provisions set forth in this Officers' Certificate shall control;

(m) The Trustee for the Notes shall be HSBC Bank USA;

(n) The Notes shall be issued initially in the form of a Global Note ("Global Note") in definitive, fully registered form without interest coupons in substantially the form of Exhibit A, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its principal corporate trust office in New York City, as custodian for the Depository, and registered in the name of the Depository or a nominee thereof, duly executed by the Company and authenticated by the Trustee where so provided. The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depository or its nominee in accordance with the Depository's

procedures and as provided in Section 2.14 of the Indenture. Except as provided in Section 2.14 of the Indenture, owners of beneficial interest in Global Notes shall not be entitled to receive physical

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delivery of certificated Notes. The Depository for such Global Notes shall be The Depository Trust Company;

(o) The Notes shall not be secured by any collateral;

(p) The Notes shall not be guaranteed by any person;

(q) The Notes shall be general unsecured obligations of the Company and shall, to the extent provided in Article XII of the Indenture, be subordinated in right of payment to the prior payment in full of the Company's senior indebtedness; and

(r) The provisions of Section 8.3 and 8.4 of the Indenture shall be applicable to the Notes.

3. Additional Redemption Provisions. In addition to the redemption provisions set forth in Article III of the Indenture, the Notes shall include the following additional provisions:

Section 3.7. Conversion Arrangement on Call for Redemption.

In connection with any redemption of Securities, the Company may arrange for the purchase and conversion of any Securities by an agreement with one or more investment bankers or other purchasers to purchase such Securities by paying to the Trustee in trust for the Holders, on or before the date fixed for redemption, an amount not less than the applicable redemption price, together with interest accrued to (but excluding) the date fixed for redemption, of such Securities. Notwithstanding anything to the contrary contained in this Article III, the obligation of the Company to pay the redemption price of such Securities, together with interest accrued to (but excluding) the date fixed for redemption, shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, a copy of which will be filed with the Trustee prior to the date fixed for redemption, any Securities not duly surrendered for conversion by the Holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such Holders and (notwithstanding anything to the contrary contained in Article XIII) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Securities shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Company for the redemption of Securities. Without the Trustee's prior written consent, no arrangement between the Company and such purchasers for the purchase and conversion of any Securities shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture.

Section 3.8. Redemption at Option of Holders.

If there shall occur a Fundamental Change at any time prior to maturity of the Securities, then each Holder shall have the right, at such Holder's option, to require the Company to redeem all of such Holder's Securities, or any portion thereof that is an integral multiple of $1,000 principal amount, on the date (the "Repurchase Date") that is thirty (30) days after the

date of the Company Notice (as defined below) of such Fundamental Change (or, if such 30th day is not a Business Day, the next succeeding Business Day) at a redemption price equal to 100% of the principal amount thereof, together with accrued interest to (but excluding) the Repurchase Date; provided that if such Repurchase Date is February 1 or August 1, then the interest payable on such date shall be paid to the Holders of record of the Securities on the next preceding January 15 or July 15, respectively. Upon presentation of any Securities redeemed in part only, the Company shall execute and, upon the Company's written direction to the Trustee, the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, new Securities, of authorized denominations, in principal amount equal to the unredeemed portion of the Securities so presented.

On or before the tenth day after the occurrence of a Fundamental Change, the Company, or, at its written request (which must be received by the Trustee at least five (5) Business Days prior to the date the Trustee is requested to give notice as described below, unless the Trustee shall agree to a shorter period), the Trustee in the name of and at the expense of the Company, shall mail or cause to be mailed to all Holders of record on the date of the Fundamental Change a notice (the "Company Notice") of the occurrence of such Fundamental Change and of the redemption right at the option of the Holders arising as a result thereof. Such notice shall be mailed in the manner and with the effect set forth in Sections 3.3 and 3.4 hereof (without regard for the time limits set forth therein). If the Company shall give such notice, the Company shall also deliver a copy of the Company Notice to the Trustee at such time as it is mailed to Holders. Each Company Notice shall specify the circumstances constituting the Fundamental Change, the Repurchase Date, the price at which the Company shall be obligated to redeem Securities, that the Holder must exercise the redemption right on or prior to the close of business on the Repurchase Date (the "Fundamental Change Expiration Time"), that the Holder shall have the right to withdraw any Securities surrendered prior to the Fundamental Change Expiration Time, a description of the procedure which a Holder must follow to exercise such redemption right and to withdraw any surrendered Securities, the place or places where the Holder is to surrender such Holder's Securities, and the amount of interest accrued on such Securities to the Repurchase Date.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' redemption rights or affect the validity of the proceedings for the repurchase of the Securities pursuant to this Section 3.8.

For Securities to be so repaid at the option of the Holder, the Company must receive at the office or agency of the Company maintained for that purpose or, at the option of such Holder, the Corporate Trust Office, such Securities with the form entitled "Option to Elect Repayment Upon A Fundamental Change" on the reverse thereof duly completed, together with such Securities duly endorsed for transfer, on or before the Fundamental Change Expiration Time. All questions as to the validity, eligibility (including time of receipt) and

acceptance of any Securities for repayment shall be determined by the Company, whose determination shall be final and binding absent manifest error.

On or prior to the Repurchase Date, the Company will deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own paying agent, set aside, segregate and hold in trust) an amount of money sufficient to repay on the Repurchase Date all

the Securities to be repaid on such date at the appropriate redemption price, together with accrued interest to (but excluding) the Repurchase Date; provided that if such payment is made on the Repurchase Date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m. New York City time, on such date. Payment for Securities surrendered for redemption (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly (but in no event more than five (5) Business Days) following the Repurchase Date by mailing checks for the amount payable to the Holders of such Securities entitled thereto as they shall appear on the registry books of the Company.

In the case of a reclassification, change, consolidation, merger, combination, sale or conveyance to which Section 13.6 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive stock, securities or other property or assets (including cash), which includes shares of Common Stock of the Company or another person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such stock, securities or other property or assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel that such supplemental indenture complies with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of Holders of the Securities to cause the Company to repurchase the Securities following a Fundamental Change, including without limitation the applicable provisions of this Section 3.8 and the definitions of the Conversion Price, Common Stock and Fundamental Change, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to the common stock and the issuer thereof if different from the Company and Common Stock of the Company (in lieu of the Company and the Common Stock of the Company).

The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act to the extent then applicable in connection with the redemption rights of the Holders of Securities in the event of a Fundamental Change.

4. Conversion Provisions. The Notes shall contain the following provisions regarding conversion:

"ARTICLE XIII

CONVERSION OF SECURITIES

Section 13.1. Right to Convert.

Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at its option, at any time following the original issuance of the Securities hereunder through the close of business on the final maturity date of the Securities (except that,

with respect to any Securities or portion thereof which shall be called for redemption, such right shall terminate, except as provided in Section 13.2 or Section 3.7, at the close of business on the Business Day next preceding the date fixed for redemption of such Securities or portion thereof unless the Company shall default in payment due upon redemption thereof) to convert the principal amount of any such Securities, or any portion of such principal amount which is $1,000 or an integral multiple thereof, into that number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing the principal amount of the Securities or portion thereof surrendered for conversion by the Conversion Price in effect at such time, by surrender of the Securities so to be converted in whole or in part in the manner provided, together with any required funds, in Section 13.2. Securities in respect of which a holder is exercising its option to require redemption upon a Fundamental Change pursuant to Section 3.8 may be converted only if such holder withdraws its election to exercise in accordance with Section 3.8. A holder of Securities is not entitled to any rights of a holder of Common Stock until such holder has converted his Securities to Common Stock, and only to the extent such Securities are deemed to have been converted to Common Stock under this Article XIII.

Section 13.2. Exercise of Conversion Privilege; Issuance of Common Stock on Conversion; No Adjustment for Interest Dividends.

In order to exercise the conversion privilege with respect to any Securities in certificated form, the holder of any such Securities to be converted in whole or in part shall surrender such Securities, duly endorsed, at an office or agency maintained by the Company as set forth in the Securities, accompanied by the funds, if any, required by the penultimate paragraph of this Section 13.2, and shall give written notice of conversion in the form provided on the Securities (or such other notice which is acceptable to the Company) to the office or agency that the holder elects to convert such Securities or the portion thereof specified in said notice. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 13.7. All such Securities surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Securities, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or his duly authorized attorney.

In order to exercise the conversion privilege with respect to any interest in Securities in global form, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, deliver by book-entry delivery an interest in such Securities in global form, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or conversion agent, and pay the funds, if any, required by this Section 13.2 and any transfer taxes if

required pursuant to Section 13.7.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Holder (as if such transfer were a transfer of the Securities (or portion thereof) so converted), the Company shall issue and shall

deliver to such Holder at the office or agency maintained by the Company for such purpose as set forth in the Securities, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Securities or portion thereof in accordance with the provisions of this Article and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 13.3. In case any Securities of a denomination greater than $1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Securities so surrendered, without charge to him, new Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Securities.

Each conversion shall be deemed to have been effected as to any such Securities (or portion thereof) on the date on which the requirements set forth above in this Section 13.2 have been satisfied as to such Securities (or portion thereof), and the person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; provided, however, that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such Securities shall be surrendered.

All Securities or portion thereof surrendered for conversion during the period from the close of business on the record date for any interest payment date to the close of business on the Business Day next preceding the following interest payment date shall (unless such Securities or portion thereof being converted shall have been called for redemption on a redemption date which occurs during the period from the close of business on such record date to the close of business on the Business Day next preceding the following interest payment date) be accompanied by payment, in funds acceptable to the Company, of an amount equal to the interest otherwise payable on such interest payment date on the principal amount being converted; provided, however, that no such payment need be made if there shall exist at the time of conversion a default in the payment of interest on the Securities. Except as provided above in this Section 13.2, no payment or other adjustment shall be made for interest accrued on any Securities converted or for dividends on any shares issued upon the conversion of such Securities as provided in this Article.

Upon the conversion of an interest in Securities in global form, the Trustee (or other conversion agent appointed by the Company), or the Custodian at the direction of the Trustee (or other conversion agent appointed by the Company), shall make a notation on such Securities in global form as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Securities effected through

any conversion agent other than the Trustee.

Section 13.3. Cash Payments in Lieu of Fractional Shares.

No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon conversion of Securities. If multiple Securities shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable

upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Securities, the Company shall make an adjustment and payment therefor in cash at the current market price thereof to the holder of Securities. The current market price of a share of Common Stock shall be the Closing Price on the last Business Day immediately preceding the day on which the Securities (or specified portions thereof) are deemed to have been converted.

Section 13.4. Conversion Price.

The conversion price shall be as specified in the form of Note (herein called the "Conversion Price") attached as Exhibit A hereto, subject to adjustment as provided in this Article XIII.

Section 13.5. Adjustment of Conversion Price.

The Conversion Price shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Price in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Conversion Price by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For purposes of this paragraph (a), the number of shares of Common Stock outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 13.5(a) is declared but not so paid or made, the Conversion Price shall again be adjusted to the Conversion Price which would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within forty-five (45) days after the date fixed for determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price (as defined below) on the date fixed for determination of

stockholders entitled to receive such rights or warrants, the Conversion Price shall be adjusted so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights and warrants plus the number of shares which the aggregate offering price of the total

number of shares so offered would purchase at such Current Market Price, and the denominator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights and warrants plus the total number of additional shares of Common Stock offered for subscription or purchase. Such adjustment shall be successively made whenever any such rights and warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Price shall be readjusted to the Conversion Price which would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company (other than any dividends or distributions to which Section 13.5(a) applies) or evidences of its indebtedness or assets (including securities, but excluding any rights or warrants referred to in Section 13.5(b), and excluding any dividend or distribution (x) paid exclusively in cash or (y) referred to in Section 13.5(a)) (any of the foregoing hereinafter in this Section 13.5(d) called the "Distributed Securities"), then, in each such case (unless the Company elects to reserve such Distributed Securities for distribution to the Holders upon the conversion of the Securities so that any

such converting Holder will receive upon such conversion, in addition to the shares of Common Stock to which such Holder is entitled, the amount and kind of such Distributed Securities which such Holder would have received if such Holder had converted its Securities into Common Stock immediately prior to the Record Date (as defined in Section 13.5(h)(5) for such distribution of the Distributed Securities)), the Conversion Price shall be reduced so that the same shall be equal to the price determined by multiplying the Conversion Price in effect on the Record Date with respect to such distribution by a fraction, the numerator of which shall be the Current Market Price per share of the Common Stock on such Record Date less the fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in

a resolution of the Board if Directors) on the Record Date of the portion of the Distributed Securities so distributed applicable to one share of Common Stock and the denominator of which shall be the Current Market Price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day following such Record Date; provided, however, that in the event the then fair market value (as so determined) of the portion of the Distributed Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of Distributed Securities such Holder would have received had such Holder converted all Securities on the Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 13.5(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock.

Under the provisions of the Company's Share Purchase Rights Plan, dated as of October 8, 1997, between the Company and The First National Bank of Boston (the "Rights Plan"), upon conversion of the Securities into Common Stock to the extent that such Rights Plan is still in effect upon such conversion, the Holders will receive, in addition to the Common Stock, the Rights described therein (whether or not the Rights have separated at the time of conversion), subject to certain exceptions set forth in the Rights Plan.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.5 (and no adjustment to the Conversion Price under this Section 13.5 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Price shall be made under this Section 13.5(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase

different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Price under this Section 13.5 was made, (1) in the case of any such rights or warrants which shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Price shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share

redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants which shall have expired or been terminated without exercise by any holders thereof, the Conversion Price shall be readjusted as if such rights and warrants had not been issued.

For purposes of this Section 13.5(d) and Sections 13.5(a) and (b), any dividend or distribution to which this Section 13.5(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights or warrants (and any Conversion Price reduction required by this Section 13.5(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Price reduction required by Sections 13.5(a) and (b) with respect to such dividend or distribution shall then be made), except (A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution" and "the date fixed for such determination" within the meaning of Sections 13.5(a) and (b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 13.5(a).

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding (x) any quarterly cash dividend on the Common Stock to the extent the aggregate cash dividend per share of Common Stock in any fiscal quarter does not exceed the greater of (A) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require any adjustment of the Conversion Price pursuant to this Section 13.5(e) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (B) 3.75% of the arithmetic average of the Closing Price (determined as set forth in Section 13.5(h)) during the ten Trading Days (as defined in Section 13.5(h)) immediately prior to the date of declaration of such dividend, and (y) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or

involuntary), then, in such case, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the close of business on such Record Date by a fraction, the numerator of which shall be the Current Market Price of the Common Stock on the record date less the amount of cash so distributed (and not excluded as provided above) applicable to one share of Common Stock and the denominator of which shall be such Current Market Price of the Common Stock, such reduction to be effective immediately prior to the opening of business on the day following the record date; provided, however, that in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion the amount of cash such Holder would have received had such Holder converted all of the Securities on the Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Price shall again be adjusted to be the

Conversion Price which would then be in effect if such dividend or distribution had not been declared. If any adjustment is required to be made as set forth in this Section 13.5(e) as a result of a distribution that is a quarterly dividend, such adjustment shall be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant hereto. If an adjustment is required to be made as set forth in this Section 13.5(e) above as a result of a distribution that is not a quarterly dividend, such adjustment shall be based upon the full amount of the distribution.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) that exceeds the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction, the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) on the Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently

prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made.

(g) In case of a tender or exchange offer made by a person other than the Company or any Subsidiary for an amount which increases the offeror's ownership of Common Stock to more than twenty-five percent (25%) of the Common Stock outstanding and shall involve the payment by such person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) at the last time (the "Offer Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the Current Market Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time, and in which, as of the Offer Expiration Time, the Board of Directors is not recommending rejection of the offer, the Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Offer Expiration Time by a fraction, the numerator of which shall

be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) on the Offer Expiration Time multiplied by the Current Market Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time and the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Accepted Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Accepted Purchased Shares) on the Offer Expiration Time and the Current Market Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Offer Expiration Time. In the event that such person is obligated to purchase shares pursuant to any such tender or exchange offer, but such person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price which would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 13.5(g) shall not be made if, as of the Offer Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Article V.

(h) For purposes of this Section 13.5, the following terms shall have the meaning indicated:

(1) "Closing Price" with respect to any securities on any day shall mean the closing sale price, regular way, on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the Nasdaq National Market, or, if such security is not listed or admitted to trading on such Nasdaq National Market, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed

or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors or, to the extent permitted by applicable law, a duly authorized committee thereof, whose determination shall be conclusive.

(2) "Current Market Price" shall, for the purposes of any computation under subsections (b), (d), (e), (f) and (g) above relating to the current market price per share of Common Stock at a specified date, mean the average of the last reported sale prices for the ten (10) consecutive Trading Days (as defined below) preceding the day before the record date (or, if earlier, the ex-dividend date) with respect to any distribution, issuance or other event requiring such computation.

(3) "fair market value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction.

(4) "Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(5) "Trading Day" shall mean (x) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made on thereon or (y) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national security exchange, a day on which the New York Stock Exchange or another national security exchange is open for business or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(i) The Company may make such reductions in the Conversion Price, in addition to those required by Sections 13.5 (a), (b), (c), (d), (e), (f) or (g), as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may reduce the Conversion Price by any amount for any period of time if the period is at least twenty (20) days, the reduction is irrevocable during the period and the Board of Directors shall have made a determination that such reduction would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Price is reduced pursuant to the preceding sentence, the Company shall mail to holders of record of the Securities a notice of the reduction at least fifteen (15) days prior to the

date the reduced Conversion Price takes effect, and such notice shall state the reduced Conversion Price and the period during which it will be in effect.

(j) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such price; provided, however, that any adjustments which by reason of this Section 13.5(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article XIII shall be made by the Company and shall be made to the nearest cent or to the nearest one-hundredth (1/100) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Securities become convertible into cash, assets, property or securities (other than capital stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on the cash.

(k) Whenever the Conversion Price is adjusted as herein provided, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers' Certificate setting forth the Conversion Price after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of

the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Price and may assume without inquiry that the last Conversion Price of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to each Holder of Securities at his last address appearing on the list of Securityholders provided for in Section 2.6 of this Indenture, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(1) In any case in which this Section 13.5 provides that an adjustment shall become effective immediately after a record date for an event, the Company may defer until the occurrence of such event (i) issuing to the holder of any Securities converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 13.3.

(m) For purposes of this Section 13.5, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

Section 13.6. Effect of Reclassification, Consolidation, Merger or Sale.

If any of the following events occur, namely (i) any

reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section 13.5(c) applies), (ii) any consolidation, merger or combination of the Company with another person as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including

cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other person as a result of which holders of Common Stock shall be entitled to receive stock, securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing person, as the case may be, shall execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing that such Securities shall be convertible into the kind and amount of shares of stock, securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Securities (assuming, for such purposes, a sufficient number of authorized shares of Common Stock available to convert all such Securities) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance (provided that, if the kind or amount of stock, securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("nonelecting share"), then for the purposes of this Section 13.6 the kind and amount of securities, cash or other property receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XIII.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If this Section 13.6 applies to any event or occurrence, Section 13.5 shall not apply.

Section 13.7. Taxes on Shares Issued.

The issue of stock certificates on conversions of Securities shall be made without charge to the converting Holder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Securities converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the person or persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 13.8. Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Securities from time to time as such Securities are presented for conversion.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Securities, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Price.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Securities will upon issue be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company covenants that if any shares of Common Stock to be provided for the purpose of conversion of Securities hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as possible endeavor to secure such registration or approval, as the case may be.

The Company further covenants that, if at any time the Common Stock shall be listed on the Nasdaq National Market or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Securities; provided, however, that if rules of such exchange or automated quotation system permit the Company to defer the listing of such Common Stock until the first conversion of the Securities into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Securities in accordance with the requirements of such exchange or automated quotation system at such time.

Section 13.9. Responsibility of Trustee.

The Trustee and any other conversion agent shall not at any time be under any duty or responsibility to any holder of Securities to determine the Conversion Price or whether any facts exist which may require any adjustment of the Conversion Price, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other conversion agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Securities; and the Trustee and any other conversion agent make no representations with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other

securities or property or cash upon the surrender of any Securities for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any conversion agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 13.6 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Securities after any event referred to in such Section 13.6 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.1, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 13.10. Notice to Holders Prior to Certain Actions.

In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Price pursuant to Section 13.5; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company or any Significant Subsidiary; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any Significant Subsidiary;

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Securities at his address appearing on the list of Securityholders provided for in Section 2.6 of this Indenture, as promptly as possible but in any event at least fifteen (15) days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up."

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5. Additional Definitions. In addition to the definitions set forth in Article I of the Indenture or, where applicable, in lieu thereof, the Notes shall include the following definitions:

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"Common Stock" means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 13.6, however, shares issuable on conversion of Securities shall include only shares of the class designated as common stock of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; provided that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Fundamental Change" means the occurrence of any transaction or event in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) which is not all or substantially all common stock listed (or, upon consummation of or immediately following such transaction or event, will be listed) on a United States national securities exchange or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

"Officers' Certificate" means a certificate signed by two Officers, one of whom must be the Company's principal executive officer, principal financial officer or principal accounting officer, which certificate shall include the statements provided for in Section 10.5.

"Responsible Officer" means any officer of the Trustee with direct responsibility for the administration of the Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with a particular subject.

6. Board Resolutions. Attached hereto as Exhibit B are true and correct copies of the Resolutions. The Resolutions have not been amended, modified or rescinded and remain in full force and effect, and the Resolutions are the only resolutions adopted by the Company's Board of Directors or any committee thereof relating to the Notes and the transactions related thereto.

Each of the undersigned officers further states that he has read the provisions of the Indenture setting forth the conditions precedent to the issuance, authentication and delivery of the Notes and the definitions relating thereto, the Resolutions authorizing the issuance of the Notes and the Form of Notes; that the statements made in this Certificate are based upon the examination of the provisions of such Indenture, the Resolutions and the Form of Notes; that he has, in his opinion, made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not the conditions precedent for the issuance, authentication and delivery of the Notes have been complied with; and that, in his opinion, such conditions have been complied with.

[Signature page follows]

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IN WITNESS WHEREOF, said officers have signed this certificate this __ day of February, 2001.

---	---
Name:	Name:
Title:	Title:

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EXHIBIT A

[FORM OF NOTE]

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR DEPOSITARY OR SUCH SUCCESSOR'S NOMINEE AND LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO HEREIN.

AVIRON

5 1/4% CONVERTIBLE SUBORDINATED NOTES DUE 2008

No. ___ CUSIP NO. 053762AD2 $_____

AVIRON, a Delaware corporation (the "Company"), for value received, hereby promises to pay to CEDE & CO., as nominee of The Depository Trust Company, or registered assigns, the principal sum of _____ Dollars on February 1, 2008.

Interest Payment Dates: February 1 and August 1

Record Dates: January 15 and July 15

Reference is made to the further provisions of this Note set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee under the Indenture referred to on the reverse hereof.

IN WITNESS WHEREOF, AVIRON has caused this instrument to be signed manually or by facsimile by its duly authorized officers and has caused a facsimile of its corporate seal to be affixed hereunto or imprinted hereon.

AVIRON

By:

Authorized Signatory

Dated:

By:

Authorized Signatory

CERTIFICATE OF AUTHENTICATION

This is one of the Securities referred to in the within-mentioned Indenture.

HSBC BANK USA, as Trustee

By:

Authorized Signatory

(REVERSE OF SECURITY)

5 1/4% CONVERTIBLE SUBORDINATED NOTES DUE 2008

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture referred to below.

1. Interest. AVIRON, a Delaware corporation (the "Company", which term shall include any successor thereto in accordance with the Indenture), promises to pay interest on the principal amount hereof at the rate per annum shown above. Interest on the Securities shall accrue from February 7, 2001 or from the most recent interest payment date to which interest has been paid or provided for, as the case may be; interest on the Securities shall be payable semi-annually on February 1 and August 1 of each year until maturity, or, if such day is a Legal Holiday, on the next succeeding day that is not a Legal Holiday (each, an "Interest Payment Date"), commencing on August 1, 2001; and interest on the Securities shall be payable to holders of record on the January 15 or July 15 immediately preceding the applicable Interest Payment Date. Interest will be computed on the basis of a 360-day year of twelve 30-day months. The Company shall pay defaulted interest on overdue interest, plus (to the extent lawful) any interest payable on the defaulted interest, as provided in Section 2.13 of the Indenture.

2. Method of Payment. The Company will pay interest on the Securities (except defaulted interest) to the persons who are holders ("Holders") of record in the security register of the Company (the "Security Register") of Securities at the close of business on the January 15 or July 15 (each a "Record Date") next preceding the Interest Payment Date, in each case even if the Securities are cancelled solely by virtue of registration of transfer or registration of exchange after such Record Date. Holders must surrender Securities to a Paying Agent to collect principal payments. The Company will pay principal and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Principal of, premium, if any, and interest on the Securities will be payable, and the Securities may be exchanged or transferred, at the office or agency of the Company in the Borough of Manhattan, the City of New York (which initially will be the Corporate Trust Office of the Trustee); provided that, at the option of the Company, payment of interest may be made by check mailed to the address of each Holder as such address appears in the Security Register; provided, further, that, at the option of each Holder holding an aggregate principal amount of Securities in excess of $2,000,000, payment of interest shall be made by check and so mailed to such Holder, provided, however, that payments to the Depository will be made by wire transfer of immediately available funds to the account of the Depository or its nominee.

3. Paying Agent and Registrar. Initially, HSBC Bank USA, a New York banking corporation (the "Trustee"), will act as Paying Agent and Registrar. The Company may appoint and change any Paying Agent, Registrar or co-Registrar without notice to any Holder. The Company or any of its Affiliates may act as Paying Agent, Registrar or co-Registrar.

4. Indenture. The Company issued the Securities under an Indenture dated as of February __, 2001 by and between the Company and the Trustee, the terms of which have been established in an Officers' Certificate, dated _____, 2001, pursuant to Sections 2.1 and 2.2 of the Indenture (collectively, the "Indenture"). The Securities are a series designated as the

"5 1/4% Convertible Subordinated Notes due 2008" of the Company, limited in aggregate principal amount to $230,000,000. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in

effect on February __, 2001 (the "TIA"). The Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of those terms. Any conflict between the terms of this Security and the Indenture will be governed by the Indenture.

The Securities are general unsecured obligations of the Company and shall, to the extent provided in the Indenture, be subordinated in right of payment to the prior payment in full of the Company's senior indebtedness.

5. Optional Redemption. The Company, at its option, may redeem all or any part of the Securities, in whole or in part, at any time on or after February 5, 2004, at the redemption prices (expressed in percentages of principal amount) set forth below plus accrued and unpaid interest thereon to, but excluding, the Redemption Date:

<TABLE>
<CAPTION>

Period	Redemption Price
<S>	<C>
Beginning on February 5, 2004 and ending on January 31, 2005.....	103.000%
Beginning on February 1, 2005 and ending on January 31, 2006.....	102.250%
Beginning on February 1, 2006 and ending on January 31, 2007.....	101.500%
Beginning on February 1, 2007 and ending on January 31, 2008.....	100.750%
February 1, 2008 and thereafter.....	100.00%

</TABLE>

The Company may not so redeem Securities if the Company has failed to pay any interest on the Securities when due and such failure to pay is continuing. If the redemption date is an interest payment date, interest shall be paid to the record holder of the relevant record date.

6. Redemption at Option of Holders. If a Fundamental Change occurs at anytime prior to maturity, the Securities will be redeemable on the 30th day after notice thereof (the "Repurchase Date") at the option of the Holder at a redemption price equal to 100% of the principal amount thereof, together with accrued interest to (but excluding) the Repurchase Date; provided, however, that, if such Repurchase Date is a February 1 or August 1, the interest payable on such date shall be paid to the holder of record of the Securities on the next preceding January 15 or July 15, respectively. The Securities will be redeemable in multiples of $1,000 principal amount. The Company shall mail to all Holders a notice of the occurrence of a Fundamental Change and of the redemption right arising as a result thereof on or before the 10th day after the occurrence of such Fundamental Change. For Securities to be so redeemed at the option of the Holder, the Company must receive at the office or agency of the Company maintained for that purpose or as otherwise set forth in the Indenture and in accordance with the terms thereof, such Securities with the form entitled "Option to Elect Repayment Upon a Fundamental Change" on the reverse thereof duly completed, together with such Securities, duly endorsed for transfer, on or before the 30th day after the date of such notice of a Fundamental Change.

7. Conversion. Subject to the provisions of the Indenture, each Holder has the right, at its option, at any time after the original issuance of any Securities through the close of business on the final maturity date of the Securities, or, as to all or any portion hereof called for redemption, prior to

the close of business on the Business Day immediately preceding the date fixed for redemption (unless the Company shall default in payment due upon redemption thereof), to convert the principal thereof or any portion of such principal which is $1,000 or an integral multiple thereof into that number of shares of the Company's Common Stock (as such shares shall be constituted at the date of conversion) obtained by dividing the principal amount of the Securities or portion thereof to be converted by the Conversion Price of $___, as may adjusted from time to time as provided in the Indenture, upon surrender of such Securities, together with a conversion notice as provided in the Indenture (the form entitled "Conversion Notice" on the reverse hereof), to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, or at the option of such holder, the Corporate Trust Office, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the Holder or such Holder's duly authorized attorney. No adjustment in respect of interest on any Securities converted or dividends on any shares issued upon conversion thereof will be made upon any conversion except as set forth in the next sentence. If such Securities (or portion thereof) are surrendered for conversion during the period from the close of business on any record date for the payment of interest to the close of business on the Business Day preceding the following interest payment date and either (x) have not been called for redemption on a redemption date that occurs during such period or (y) are not to be redeemed in connection with a Fundamental Change on a Repurchase Date that occurs during such period, such Securities (or portion thereof being converted) must be accompanied by an amount, in New York Clearing House funds or other funds acceptable to the Company, equal to the interest payable on such interest payment date on the principal amount being converted; provided, however, that no such payment shall be required if there shall exist at the time of conversion a default in the payment of interest on the Securities. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Securities for conversion. Securities in respect of which a Holder is exercising its right to require redemption upon a Fundamental Change may be converted only if such Holder withdraws its election to exercise such right in accordance with the terms of the Indenture. Any Securities called for redemption, unless surrendered for conversion by the Holders thereof on or before the close of business on the Business Day preceding the date fixed for redemption, may be deemed to be redeemed from such Holders for an amount equal to the applicable redemption price, together with accrued but unpaid interest to (but excluding) the date fixed for redemption, by one or more investment banks or other purchasers who may agree with the Company (i) to purchase such Notes from the holders thereof and convert them into shares of the Company's Common Stock and (ii) to make payment for such Notes as aforesaid to the Trustee in trust for the holders.

8. Sinking Fund. The Securities will not be subject to the operation of any sinking fund.

9. Denominations; Transfer; Exchange. The Securities are in registered form, without coupons, in denominations of $1,000 of principal amount and any integral multiple

thereof. A Holder may transfer or exchange Securities in accordance with the Indenture. No service charge will be made for any registration of transfer or exchange of Securities, but the Company may require the payment of a sum sufficient to cover any transfer tax or other similar governmental charge payable in connection therewith, subject to and as permitted by the Indenture.

10. Persons Deemed Owners. The registered Holder of this Security may be treated as the owner of it for all purposes.

11. Repayment to Company. The Trustee and the Paying Agent shall pay to the Company upon the Company's request any money held by them for the payment of principal or interest that remains unclaimed for two years after the date upon which such payment shall have become due. After payment to the Company, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designated another Person.

12. Discharge and Defeasance. Subject to certain conditions, the Company at any time may terminate some or all of its obligations under the Securities and the Indenture if the Company deposits with the Trustee money and/or U.S. Government Obligations for the payment of principal and interest on the Securities to maturity.

13. Defaults and Remedies. Under the Indenture, Events of Defaults with respect to the Securities of all Series affected include (a) failure to pay the principal of, or premium, if any, on such Securities when due and payable; (b) failure to pay any interest on such Securities when due, continued for 30 days; (c) failure to perform or observe any other covenants or warranties of the Company in the Indenture, including failure to comply with the provisions of the Indenture applicable to consolidation, merger and sale of assets of the Company, continued for 60 days after written notice as set forth in the Indenture; and (d) certain events of bankruptcy, insolvency or reorganization.

If an Event of Default with respect to the Securities of any Series (other than an Event or Default relating to certain events of bankruptcy, insolvency or reorganization) shall occur and be continuing, either the Trustee or the holders of at least 25% in principal amount of the outstanding Securities of such Series may, by notice, as provided in the Indenture, declare the unpaid principal amount of, and any accrued and unpaid interest on, the Securities to be due and payable immediately. However, at any time after a declaration of acceleration with respect to the Securities has been made and before any judgment or decree for payment of money due has been obtained, the Holders of a majority in principal amount of the outstanding Securities of such Series may, under certain circumstances, rescind and annul such acceleration if all existing Events of Default with respect to such Securities have been cured or waived except nonpayment of principal (or such lesser amount) or interest that has become due solely because of the acceleration.

Subject to the duty of the Trustee during an Event of Default to act with the required standard of care, the Trustee is under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders, unless such holders shall have offered to the Trustee reasonable security or indemnity. Subject to certain provisions,

including those requiring security or indemnification of the Trustee, the holders of a majority in principal amount of the outstanding Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities.

14. Supplements, Amendments and Waivers. Subject to certain exceptions, the Company and the Trustee may amend the Indenture or the

Securities with the written consent of the Holders of a majority in principal amount of the then outstanding Securities. The Holders of a majority in principal amount of the then outstanding Securities may also waive compliance in a particular instance by the Company with any provision of the Indenture with respect to the Securities; provided, however, that certain amendments or waivers may not be made without the consent of each holder of Securities affected as provided in the Indenture.

The Company and the Trustee may amend the Indenture or the Securities without notice to or the consent of any holder of Securities in certain circumstances described in the Indenture.

The holders of a majority in principal amount of the outstanding Securities, by notice to the Trustee, may waive an existing Default or Event of Default and its consequences except a Default or Event of Default in the payment of the principal of, or any interest on, the Securities (provided, however, that the holders of a majority in principal amount of the outstanding Securities may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration).

15. Trustee Dealings with the Company. Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

16. No Recourse Against Others. A past, present or future director, officer, employee, stockholder or incorporator, as such, of the Company or any successor corporation shall not have any liability for any obligations of the Company under this Security or the Indenture or for any claim based on, in respect of, or by reason of such obligations or their creation. Each Securityholder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration of issuance of the Securities.

17. Governing Law. THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE SECURITIES, WITHOUT REGARD TO THE CONFLICT OF LAWS PROVISIONS THEREOF.

18. Successors and Assigns. All covenants and agreements of the Company in the Indenture and the Securities shall bind its successors and assigns. All agreements of the Trustee in the Indenture shall bind its successors.

19. Authentication. This Security shall not be valid until an authorized signatory of the Trustee (or an authenticating agent) manually signs the certificate of authentication hereon.

20. Abbreviations. Customary abbreviations may be used in the name of a Securityholder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=Tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act).

21. Subordination. The Securities are subordinated to all Senior Indebtedness, which includes almost all indebtedness other than (i) indebtedness that expressly provides that it shall not be senior in right of payment to the Securities or expressly provides that it is on the same basis or junior to the

Securities; (ii) indebtedness of the Company to any of its majority-owned subsidiaries; and (iii) the Securities. To the extent provided in the Indenture, Senior Indebtedness must be paid before the Securities may be paid. The Company agrees, and each Holder by accepting a Security consents and agrees, to the subordination provided in the Indenture and authorizes the Trustee to give it effect.

22. CUSIP Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities, and the Trustee may use CUSIP numbers in notices as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Securities or as contained in any notice and reliance may be placed thereon.

The Company will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture. Such requests may be addressed to:

Aviron
297 North Bernardo Avenue
Mountain View, California 94043
Attention: Corporate Secretary

CONVERSION NOTICE

TO: AVIRON

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion hereof (which is $1,000 or an integral multiple thereof) below designated, into shares of Common Stock of Aviron in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will check the appropriate box below and pay all transfer taxes payable with respect thereto. Any amount required to be paid to the undersigned on account of interest accompanies this Note.

Dated:

Signature(s)

Signature(s) must be guaranteed by a commercial bank or trust company or a member firm of a major stock exchange if shares of Common Stock are to be issued, or Notes to be delivered, other than to and in the name of the registered holder.

Signature Guarantee

Fill in for registration of shares of Common Stock if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Please print)

(Name)

Principal amount to be converted (if less than all): $_____

(Street Address)

Social Security or Other Taxpayer Identification Number _____

(City, State and Zip Code)

OPTION TO ELECT REPAYMENT
UPON A FUNDAMENTAL CHANGE

TO: AVIRON

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from Aviron (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note at the redemption price, together with accrued interest to, but excluding, such date, to the registered holder hereof.

Dated: _____

Signature(s) _____

NOTICE: The above signatures of the registered holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Principal amount to be converted
(if less than all): $ _____

Social Security or Other Taxpayer
Identification Number

ASSIGNMENT FORM

If you, Holder, want to assign this Note, fill in the form below and have your signature guaranteed.

FOR VALUE RECEIVED, the undersigned hereby sell(s), assign(s) and transfer(s) unto _____
(Please insert assignee's social security or tax ID number)_____
_____
_____
(Please print or type assignee's name, address and zip code)

the within Note and all rights thereunder, and hereby irrevocably constitute and appoint such person attorney to transfer such Note on the books of the Company, with full power of substitution in the premises.

Dated: ---------- Your signature: ----------

NOTICE: The signature to this assignment must correspond with the name as written upon the face of the within Note in every particular without alteration or enlargement or any change whatsoever.

Signature guarantee:
