

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **1995-05-10** | Period of Report: **1995-03-31**
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FILER

RJR NABISCO HOLDINGS CORP

CIK: **847903** | IRS No.: **133490602** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **001-10215** | Film No.: **95536156**
SIC: **2052** Cookies & crackers

Mailing Address	Business Address
1301 AVE OF THE AMERICAS NEW YORK NY 10019-6013	1301 AVE OF THE AMERICAS NEW YORK NY 10019-6013 2122585600

RJR NABISCO INC

CIK: **83612** | IRS No.: **560950247** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **10-Q** | Act: **34** | File No.: **001-06388** | Film No.: **95536157**
SIC: **2052** Cookies & crackers

Mailing Address	Business Address
1301 AVENUE OF THE AMERICAS NEW YORK NY 10019	1301 AVE OF THE AMERICAS NEW YORK NY 10019 2122585600

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q
QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED MARCH 31, 1995

RJR NABISCO HOLDINGS CORP.
(Exact name of registrant as specified in its charter)

<TABLE>
<S> DELAWARE 1-10215 13-3490602
(State or other jurisdiction of (Commission file number) (I.R.S. Employer Identification No.)
incorporation or organization)
</TABLE>

RJR NABISCO, INC.
(Exact name of registrant as specified in its charter)

<TABLE>
<S> DELAWARE 1-6388 56-0950247
(State or other jurisdiction of (Commission file number) (I.R.S. Employer Identification No.)
incorporation or organization)
</TABLE>

1301 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6013
(212) 258-5600
(Address, including zip code, and telephone number, including area code,
of the principal executive offices of RJR Nabisco Holdings Corp. and RJR
Nabisco, Inc.)

INDICATE BY CHECK MARK WHETHER THE REGISTRANTS (1) HAVE FILED ALL REPORTS
REQUIRED TO BE FILED BY SECTION 13 OR 15(D) OF THE SECURITIES EXCHANGE ACT OF
1934 DURING THE PRECEDING 12 MONTHS (OR FOR SUCH SHORTER PERIOD THAT THE
REGISTRANTS WERE REQUIRED TO FILE SUCH REPORTS), AND (2) HAVE BEEN SUBJECT TO
SUCH FILING REQUIREMENTS FOR THE PAST 90 DAYS. YES X, NO ___.

INDICATE THE NUMBER OF SHARES OUTSTANDING OF EACH OF THE REGISTRANTS' CLASSES
OF COMMON STOCK AS OF THE LATEST PRACTICABLE DATE: MARCH 31, 1995:

RJR NABISCO HOLDINGS CORP.: 272,453,530* SHARES OF COMMON STOCK, PAR VALUE \$.01
PER SHARE
RJR NABISCO, INC.: 3,021.86513 SHARES OF COMMON STOCK, PAR VALUE \$1,000 PER
SHARE

* AS ADJUSTED FOR THE APRIL 12, 1995 ONE-FOR-FIVE REVERSE STOCK SPLIT

RJR NABISCO, INC. MEETS THE CONDITIONS SET FORTH IN GENERAL INSTRUCTION
H(1)(A) AND (B) OF FORM 10-Q AND IS THEREFORE FILING THIS FORM WITH THE
REDUCED DISCLOSURE FORMAT.

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PART I

ITEM 1. FINANCIAL STATEMENTS

RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

CONSOLIDATED CONDENSED STATEMENTS OF INCOME
(DOLLARS IN MILLIONS EXCEPT PER SHARE AMOUNTS)

<TABLE>
<CAPTION>

	THREE MONTHS ENDED MARCH 31, 1995		THREE MONTHS ENDED MARCH 31, 1994	
	HOLDINGS	RJRN	HOLDINGS	RJRN
<S>	<C>	<C>	<C>	<C>
NET SALES*.....	\$ 3,540	\$ 3,540	\$ 3,572	\$ 3,572
Costs and expenses (Note 1)*:				
Cost of products sold.....	1,625	1,625	1,572	1,572
Selling, advertising, administrative and general				
expenses.....	1,136	1,135	1,212	1,207
Amortization of trademarks and goodwill.....	159	159	156	156
	620	621	632	637
OPERATING INCOME.....				
Interest and debt expense (Note 5).....	(220)	(220)	(291)	(291)
Other income (expense), net.....	(36)	(34)	(12)	(17)
	364	367	329	329
Income before income taxes.....				
Provision for income taxes.....	159	159	135	135
	205	208	194	194
INCOME BEFORE MINORITY INTEREST IN INCOME OF				
NABISCO.....	205	208	194	194

Minority interest in income of Nabisco.....	7	7	--	--
INCOME BEFORE EXTRAORDINARY ITEM.....	198	201	194	194
Extraordinary item--gain on early extinguishments of debt, net of income taxes.....	--	--	1	1
NET INCOME.....	198	201	195	195
Less preferred stock dividends.....	33	--	33	--
NET INCOME APPLICABLE TO COMMON STOCK.....	\$ 165	\$ 201	\$ 162	\$ 195
Net income per common and common equivalent share (Notes 1 and 2):				
Income before extraordinary item.....	\$ 0.51		\$.59	
Extraordinary item.....	--		--	
NET INCOME.....	\$ 0.51		\$.59	
Dividends per share of Series A Preferred Stock.....	\$ --		\$ 0.835	
Dividends per share of Series C Preferred Stock.....	\$ 1.503		\$ --	
Dividends per share of common stock (Notes 1 and 8).....	\$ 0.375		\$ --	
Average number of common and common equivalent shares outstanding (in thousands) (Notes 1 and 2).....	326,403		273,094	

</TABLE>

* Excludes excise taxes of \$819 million and \$850 million for the three months ended March 31, 1995 and 1994, respectively.

See Notes to Consolidated Condensed Financial Statements.

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(DOLLARS IN MILLIONS)

<TABLE>
<CAPTION>

	THREE MONTHS ENDED MARCH 31, 1995		THREE MONTHS ENDED MARCH 31, 1994	
	HOLDINGS	RJRN	HOLDINGS	RJRN
NET CASH FLOWS FROM (USED IN) OPERATING ACTIVITIES (NOTE 6).....	\$ (111)	\$ (102)	\$ 216	\$ 259
CASH FLOWS FROM (USED IN) INVESTING ACTIVITIES:				
Capital expenditures.....	(146)	(146)	(107)	(107)
Acquisition of businesses.....	(52)	(52)	(55)	(55)
Net proceeds from issuance of subsidiary common stock.....	1,201	1,201	--	--

<S>

<C> <C> <C> <C>

Other, net.....	43	43	1	1
Net cash flows from (used in) investing activities.....	1,046	1,046	(161)	(161)
CASH FLOWS FROM (USED IN) FINANCING ACTIVITIES:				
Net borrowings (repayments) under the credit agreements.....	(826)	(826)	872	872
Net repayments of commercial paper.....	(28)	(28)	(534)	(534)
Proceeds from issuance of other long-term debt.....	2	2	7,164	7,164
Repayments of other long-term debt.....	(194)	(194)	(7,467)	(7,467)
Financing and advisory fees paid.....	(2)	(2)	(1)	(1)
Increase in notes payable.....	57	57	72	72
Proceeds from issuance of Common Stock.....	5	--	3	--
Dividends paid on Series A Preferred Stock.....	--	--	(44)	--
Dividends paid on Series B Preferred Stock.....	(29)	--	(29)	--
Dividends paid on Series C Preferred Stock.....	(40)	--	--	--
Other preferred stock dividends paid.....	(10)	--	(10)	--
Dividends paid to parent.....	--	(18)	--	(19)
Other, net.....	16	(36)	19	(81)
Net cash flows from (used in) financing activities.....	(1,049)	(1,045)	45	6
Effect of exchange rate changes on cash and cash equivalents.....	3	3	(8)	(8)
Net change in cash and cash equivalents.....	(111)	(98)	92	96
Cash and cash equivalents at beginning of period.....	423	409	215	205
Cash and cash equivalents at end of period.....	\$ 312	\$ 311	\$ 307	\$ 301

</TABLE>

See Notes to Consolidated Condensed Financial Statements

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.
CONSOLIDATED CONDENSED BALANCE SHEETS
(DOLLARS IN MILLIONS)

<TABLE>
<CAPTION>

	MARCH 31, 1995		DECEMBER 31, 1994	
	HOLDINGS	RJRN	HOLDINGS	RJRN
<S>	<C>	<C>	<C>	<C>
ASSETS				
Current assets:				
Cash and cash equivalents.....	\$ 312	\$ 311	\$ 423	\$ 409
Accounts and notes receivable, net.....	1,079	1,079	934	934
Inventories (Note 3).....	2,722	2,722	2,580	2,580
Prepaid expenses and excise taxes.....	472	470	426	426
TOTAL CURRENT ASSETS.....	4,585	4,582	4,363	4,349
Property, plant and equipment--at cost.....	7,947	7,947	7,767	7,767
Less accumulated depreciation.....	(2,456)	(2,456)	(2,333)	(2,333)
Net property, plant and equipment.....	5,491	5,491	5,434	5,434
Trademarks, net.....	8,441	8,441	8,506	8,506

Goodwill, net.....	12,621	12,621	12,681	12,681
Other assets and deferred charges.....	413	411	424	423
	-----	-----	-----	-----
	\$ 31,551	\$31,546	\$ 31,408	\$31,393
	-----	-----	-----	-----
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Notes payable.....	\$ 365	\$ 365	\$ 296	\$ 296
Accounts payable.....	513	513	548	548
Accrued liabilities.....	2,322	2,184	2,532	2,488
Current maturities of long-term debt (Notes 5 and 9).....	677	677	1,970	1,970
Income taxes accrued.....	281	281	248	248
	-----	-----	-----	-----
TOTAL CURRENT LIABILITIES.....	4,158	4,020	5,594	5,550
	-----	-----	-----	-----
Long-term debt (less current maturities) (Notes 5 and 9).....	9,200	9,200	8,883	8,883
Other noncurrent liabilities.....	3,044	2,829	2,235	1,836
Deferred income taxes.....	3,828	3,754	3,788	3,714
Commitments and contingencies (Note 7)				
Stockholders' equity (Notes 8 and 9):.....				
ESOP convertible preferred stock (15,242,651 shares issued and outstanding at March 31, 1995).....	244	--	245	--
Series B preferred stock (50,000 shares issued and outstanding at March 31, 1995).....	1,250	--	1,250	--
Series C convertible preferred stock (26,675,000 shares issued and outstanding at March 31, 1995).....	3	--	3	--
Common stock (272,453,530 shares issued and outstanding at March 31, 1995).....	3	--	3	--
Paid-in capital.....	10,394	11,942	10,157	11,558
Retained earnings (accumulated deficit).....	(166)	--	(364)	16
Receivable from ESOP.....	(176)	--	(186)	--
Other stockholders' equity.....	(231)	(199)	(200)	(164)
	-----	-----	-----	-----
TOTAL STOCKHOLDERS' EQUITY.....	11,321	11,743	10,908	11,410
	-----	-----	-----	-----
	\$ 31,551	\$31,546	\$ 31,408	\$31,393
	-----	-----	-----	-----

</TABLE>

See Notes to Consolidated Condensed Financial Statements

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

NOTE 1--INTERIM REPORTING

For interim reporting purposes, certain costs and expenses are charged to operations in proportion to the estimated total annual amount expected to be incurred.

Certain prior year amounts have been reclassified to conform to the 1995 presentation. In addition, financial data of the prior year has been restated and financial data of the current year presented to give effect to the one-for-five reverse stock split discussed in Notes 2 and 9 to the unaudited consolidated condensed financial statements (the "Consolidated Condensed Financial Statements") of RJR Nabisco Holdings Corp. ("RJRN Holdings") and RJR Nabisco, Inc. ("RJRN" and collectively with RJRN Holdings, the "Registrants").

In management's opinion, the accompanying Consolidated Condensed Financial Statements of RJRN Holdings and RJRN contain all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of the results for the interim periods presented.

NOTE 2--EARNINGS PER SHARE

Earnings per share is based on income applicable to the consolidated group, including the portion of Nabisco Holdings Corp.'s ("Nabisco Holdings") income applicable to the consolidated group based on RJRN's approximately 80.5% economic ownership interest in Nabisco Holdings and Nabisco Holdings' primary earnings per share. Earnings per share is also based on the weighted average number of shares of RJRN Holdings' common stock, par value \$.01 per share ("Common Stock"), and RJRN Holdings' depositary shares outstanding during the period and Common Stock assumed to be outstanding to reflect the effect of dilutive options. RJRN Holdings' other potentially dilutive securities are not included in the earnings per share calculation because the effect of excluding interest and dividends on such securities for the period would exceed the earnings allocable to the Common Stock into which such securities would be converted. Accordingly, RJRN Holdings' earnings per share and fully diluted earnings per share are the same.

Net income per common and common equivalent share, including the average number of common and common equivalent shares outstanding, reflects a one-for-five reverse stock split approved by RJRN Holdings' stockholders on April 12, 1995. (See Note 9 to the Consolidated Condensed Financial Statements.)

NOTE 3--INVENTORIES

The major classes of inventory are shown in the table below:

<TABLE>
<CAPTION>

	MARCH 31, 1995	DECEMBER 31, 1994
	-----	-----
<S>	<C>	<C>
Finished products.....	\$ 824	\$ 771
Leaf tobacco.....	1,321	1,299
Raw materials.....	231	206
Other.....	346	304
	-----	-----
	\$ 2,722	\$2,580
	-----	-----
	-----	-----

</TABLE>

RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 4--RESTRUCTURING AND REALIGNMENT RESERVE BALANCES

The major components of the 1993 restructuring and 1994 headquarters realignment reserves and the related balances are as follows:

<TABLE>
<CAPTION>

	MARCH 31, 1995	DECEMBER 31, 1994
	-----	-----
<S>	<C>	<C>
Severance pay and benefits.....	\$ 159	\$187

Manufacturing/sales facilities.....	21	26
Abandonment of leases.....	40	40
Reassessment of sourcing/product arrangements.....	37	38
	-----	-----
	\$ 257	\$291
	-----	-----
	-----	-----

</TABLE>

NOTE 5--LONG-TERM DEBT AND INTEREST AND DEBT EXPENSE

Long-term debt consisted of the following:

<TABLE>
<CAPTION>

	MARCH 31, 1995	DECEMBER 31, 1994
	-----	-----
<S>	<C>	<C>
8.625-9.25% debentures with annual sinking fund payments.....	\$ 934	\$1,034
5.09-9.25% Notes.....	5,052	5,132
5.375-10% foreign currency debt.....	546	500
1991 Credit Agreement.....	2,000	1,750
1994 Nabisco Credit Agreement.....	220	1,350
Commercial paper.....	836	864
Other indebtedness.....	289	223
Less current maturities.....	(677)	(1,970)
	-----	-----
	\$ 9,200	\$8,883
	-----	-----
	-----	-----

</TABLE>

Consolidated interest and debt expense for RJRN Holdings consisted of the following:

<TABLE>
<CAPTION>

	THREE MONTHS ENDED MARCH 31,	
	1995	1994
	----	----
<S>	<C>	<C>
Cash interest.....	\$215	\$222
Non-cash interest and debt expense.....	5	69
	----	----
	\$220	\$291
	----	----
	----	----

</TABLE>

During the first quarter of 1995, the commitment under the Registrants' \$6.0 billion revolving credit facility, as amended (the "1991 Credit Agreement"), was reduced from \$6.0 billion to \$5.0 billion. Availability under the 1991 Credit Agreement is reduced by the aggregate amount of outstanding borrowings and letters of credit issued under the 1991 Credit Agreement and by the aggregate amount of outstanding borrowings and letters of credit in excess of \$1 billion issued under the \$1.5 billion 364 day Nabisco, Inc. ("Nabisco") revolving credit facility (the "1994 Nabisco Credit Agreement").

See Note 9 to the Consolidated Condensed Financial Statements for a discussion of certain pending and anticipated debt restructurings, including the refinancings of the 1991 Credit Agreement and

RJR NABISCO HOLDINGS CORP.

RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 5--LONG-TERM DEBT AND INTEREST AND DEBT EXPENSE--(CONTINUED)

the Registrants' credit agreement dated as of April 5, 1993, as amended, under which commitments have been extended through April 1, 1996 (the "1993 Credit Agreement" and together with the 1991 Credit Agreement, the "Credit Agreements"), and the 1994 Nabisco Credit Agreement.

On January 26, 1995, Nabisco Holdings completed the initial public offering of 51,750,000 shares of its Class A Common Stock, par value \$.01 per share ("Class A Common Stock") at an initial offering price of \$24.50 per share. (See Note 8 to the Consolidated Condensed Financial Statements.) Nabisco used all of the approximately \$1.2 billion of net proceeds from the initial public offering to repay a portion of its borrowings under the 1994 Nabisco Credit Agreement.

Based on RJRN's intention and ability to continue to refinance, for more than one year, the amount of its domestic commercial paper borrowings outstanding either in the commercial paper market or with additional borrowings under the 1991 Credit Agreement, domestic commercial paper borrowings have been included under "Long-term debt".

NOTE 6--SUPPLEMENTAL CASH FLOWS INFORMATION

A reconciliation of net income to net cash flows from operating activities follows:

	THREE MONTHS ENDED MARCH 31, 1995		THREE MONTHS ENDED MARCH 31, 1994	
	HOLDINGS	RJRN	HOLDINGS	RJRN
<S>	<C>	<C>	<C>	<C>
CASH FLOWS FROM (USED IN) OPERATING ACTIVITIES:				
Net income.....	\$ 198	\$ 201	\$ 195	\$ 195
Adjustments to reconcile net income to cash flows from operating activities:				
Depreciation of property, plant and equipment.....	117	117	110	110
Amortization (principally intangibles).....	172	172	174	174
Deferred income tax provision (benefit).....	2	2	(33)	(33)
Non-cash interest and debt expense.....	5	5	69	69
Extraordinary item--gain on early extinguishments of debt before income taxes.....	--	--	(1)	(1)
Changes in working capital items, net.....	(583)	(577)	(228)	(184)
Other, net.....	(22)	(22)	(70)	(71)
Total adjustments.....	(309)	(303)	21	64
NET CASH FLOWS FROM (USED IN) OPERATING ACTIVITIES.....	\$ (111)	\$ (102)	\$ 216	\$ 259

</TABLE>

NOTE 7--CONTINGENCIES

TOBACCO-RELATED LITIGATION

Various legal actions, proceedings and claims are pending or may be instituted against R. J. Reynolds Tobacco Company ("RJRT") or its affiliates or indemnitees, including those claiming that lung cancer and other diseases have resulted from the use of or exposure to RJRT's tobacco products. A total of 54 such actions in the United States and one against RJRT's Canadian subsidiary were pending on December 31, 1994. As of May 1, 1995, 61 active cases were pending against RJRT and/or its affiliates or indemnitees, 59 in the United States and two in Canada. Eight of the 59 active

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 7--CONTINGENCIES--(CONTINUED)

cases in the United States involve alleged non-smokers claiming injuries resulting from exposure to environmental tobacco smoke. Seven cases, which are described more specifically below, purport to be class actions on behalf of many thousands of individuals. Purported classes include individuals claiming to be addicted to cigarettes, flight attendants alleging personal injury from exposure to environmental tobacco smoke in their workplace and, in one case, parents claiming that an RJRT advertising campaign constitutes an unfair trade practice.

The plaintiffs in these actions seek recovery on a variety of legal theories, including strict liability in tort, design defect, negligence, breach of warranty, failure to warn, fraud, misrepresentation, unfair trade practices, conspiracy, unjust enrichment, indemnity and common law public nuisance. Punitive damages, often in amounts ranging into the hundreds of millions of dollars, are specifically pleaded in 28 cases in addition to compensatory and other damages. The defenses raised by RJRT and/or its affiliates, where applicable, include preemption by the Federal Cigarette Liability and Advertising Act, as amended (the "Cigarette Act"), of some or all such claims arising after 1969; the lack of any defect in the product; assumption of the risk; comparative fault; lack of proximate cause; and statutes of limitations or repose. Juries have found for plaintiffs in two smoking and health cases in which RJRT was not a defendant, but in one such case, which has been appealed by both parties, no damages were awarded. The jury awarded plaintiffs \$400,000 in the other such case, *Cipollone v. Liggett Group, Inc., et al.*, which award was overturned on appeal and the case was subsequently dismissed.

On June 24, 1992, the United States Supreme Court in *Cipollone* held that claims that tobacco companies failed to adequately warn of the risks of smoking after 1969 and claims that their advertising and promotional practices undermined the effect of warnings after that date were preempted by the Cigarette Act. The Court also held that claims of breach of express warranty, fraud, misrepresentation and conspiracy were not preempted. The Supreme Court's decision was announced through a plurality opinion, and further definition of how *Cipollone* will apply to other cases must await rulings in those cases.

Certain legislation proposed in recent years in Congress, among other things, would eliminate any such preemptive effect on common law damage actions for personal injuries. RJRT is unable to predict whether such legislation will be enacted and, if so, in what form, or whether such legislation would be intended by Congress to apply retroactively. The passage of such legislation could increase the number of cases filed against cigarette manufacturers, including RJRT.

Set forth below are descriptions of (i) the class action lawsuits, (ii) a suit in which plaintiffs seek to act as private attorneys general, (iii) actions brought by state attorneys general in Minnesota, Mississippi and West Virginia, (iv) an action brought by the State of Florida and (v) certain pending investigations relating to RJRT's tobacco business.

In 1991, in *Broin v. Philip Morris Company, Inc. et al.*, a purported class

action against certain tobacco industry defendants, including RJRT, was brought by flight attendants who claim to represent a class of 60,000 individuals and allege personal injury caused by exposure to environmental tobacco smoke in their workplace. In December 1994, the Florida state court certified a class consisting of "all non-smoking flight attendants who are or have been employed by airlines based in the United States and are suffering from diseases and disorders caused by their exposure to secondhand cigarette smoke in airline cabins." The defendants have appealed the ruling to the Florida Third District Court of Appeal.

In March 1994, *Castano v. The American Tobacco Company, et al.*, a purported class action, was filed in the United States District Court for the Eastern District of Louisiana against tobacco industry

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RJR NABISCO HOLDINGS CORP.

RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 7--CONTINGENCIES--(CONTINUED)

defendants, including RJRT, seeking certification of a class action on behalf of all United States residents who allegedly are or claim to be addicted, or are the legal survivors of persons who allegedly were addicted, to tobacco products manufactured by defendants. The complaint alleges that cigarette manufacturers manipulated the levels of nicotine in their tobacco products to induce addiction in smokers. Plaintiffs' motion for certification of the class was granted in part on February 17, 1995. The district court certified core liability issues (fraud, negligence, breach of warranty, both express and implied, intentional tort, strict liability and consumer protection statutes), and punitive damages. Not certified were issues of injury-in-fact, proximate cause, reliance, affirmative defenses, and compensatory damages. The defendants are pursuing appellate remedies.

In March 1994, *Lacey v. Lorillard Tobacco Company, Inc., et al.* a purported class action, was filed in Circuit Court, Fayette County, Alabama against three cigarette manufacturers, including RJRT. Plaintiff, who claims to represent all smokers who have smoked or are smoking cigarettes manufactured and sold by defendants in the state of Alabama, seeks compensatory and punitive damages not to exceed \$48,500 per class member and injunctive relief arising from defendants' alleged failure to disclose additives used in their cigarettes. In April 1994, defendants removed the case to the United States District Court for the Northern District of Alabama.

In April 1994, *Sparks v. R.J. Reynolds Tobacco Company, et al.* was brought in Washington state court on behalf of a purported class of "parents with a conscience" alleging that an RJRT advertising campaign targets minors and constitutes an unfair trade practice under Washington state law. In 1994, the case was removed to the United States District Court for the Western District of Washington. Defendants' motion to dismiss the case on preemption grounds was granted on December 9, 1994. Plaintiffs have filed a notice of appeal.

In May 1994, *Engle v. R.J. Reynolds Tobacco Company, et al.*, was filed in Circuit Court, Eleventh Judicial District, Dade County, Florida against tobacco manufacturers, including RJRT, and other members of the industry, by plaintiffs who allege injury and purport to represent a class of all United States citizens and residents who claim to be addicted, or who claim to be legal survivors of persons who allegedly were addicted, to tobacco products. On October 28, 1994, a state court judge in Miami granted plaintiffs' motion to certify the class. The defendants have appealed that ruling to the Florida Third District Court of Appeal.

In September 1994, *Granier v. American Tobacco Company, et al.*, a purported class action apparently patterned after the *Castano* case, was filed in the United States District Court for the Eastern District of Louisiana against tobacco industry defendants, including RJRT. Plaintiffs seek certification of a

class action on behalf of all residents of the United States who have used and purportedly became addicted to tobacco products manufactured by defendants. The complaint alleges that cigarette manufacturers manipulated the levels of nicotine in tobacco products for the purpose of addicting consumers. By agreement of the parties, all action in this case was stayed pending determination of the motion for class certification in the Castano case; however, there has been no activity in this case since certification in Castano.

In January 1995, a purported class action was filed in the Ontario Canada Court of Justice against RJR-MacDonald, Inc. and two other Canadian cigarette manufacturers. The lawsuit, *Le Tourneau, et al. v. Imperial Tobacco Company, Ltd., et al.*, seeks certification of a class of persons who have allegedly become addicted to the nicotine in cigarettes or who had such alleged addiction heightened or maintained through the use of cigarettes, and who have allegedly suffered loss, injury, and damage in consequence, together with persons with Family Law Act claims in respect to the claims of such

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 7--CONTINGENCIES--(CONTINUED)

allegedly addicted persons, and the estates of such allegedly addicted persons. Theories of recovery pleaded include negligence, strict liability, failure to warn, deceit, negligent misrepresentation, implied warranty, and conspiracy. The relief sought consists of damages of three million dollars, punitive damages, funding of nicotine addiction rehabilitation centers, interest and costs.

In March 1994, *Allman v. Philip Morris, Inc., et al.* and *Higley v. Philip Morris, Inc., et al.* were filed in the United States District Court for the Southern District of California against industry members and others, including RJRT, on behalf of a purported class of persons claiming to be addicted to cigarettes who had been prescribed treatment using the nicotine transdermal system. Plaintiffs assert a violation of the Racketeer Influenced and Corrupt Organizations Act and claim unspecified actual and treble damages. In April 1994, the two cases were combined into a single amended complaint and plaintiffs' counsel agreed to dismiss the Higley case. On September 28, 1994, the court granted the defendants' motion to dismiss the remaining case with prejudice. Plaintiffs filed a notice of appeal, but the parties later stipulated to a dismissal. An order was entered on February 13, 1995 dismissing the case.

In June 1994, in *Mangini v. R.J. Reynolds Tobacco Company, et al.*, the California Supreme Court ruled that the plaintiffs' claim that an RJRT advertising campaign constitutes an unfair business practice under the California Business and Professions Code was not preempted by the Cigarette Act. The suit is similar to the Sparks case pending in Washington, except that the plaintiffs here are acting as private attorneys general rather than on behalf of a purported class. This opinion allows plaintiffs to pursue their lawsuit which had been dismissed at the trial court level. On September 28, 1994, the defendants in this case filed a Petition for Certiorari to the United States Supreme Court, which was denied on December 28, 1994. The case has been remanded to the trial court where additional defendants, including RJRN, have been added.

In June 1994, in *Moore v. The American Tobacco Company, et al.*, RJRN and RJRT were named along with other industry members as defendants in an action brought by the Mississippi state attorney general on behalf of the state to recover state funds paid for health care and medical and other assistance to state citizens suffering from diseases and conditions allegedly related to tobacco use. This suit, which was brought in Chancery (non-jury) Court, Jackson County, Mississippi also seeks an injunction from "promoting" or "aiding and abetting" the sale of cigarettes to minors. Both actual and punitive damages are sought in unspecified amounts. Motions by the defendants to dismiss the case or to transfer it to circuit (jury) court were denied on February 21, 1995 and the case will proceed in Chancery Court. The defendants are considering their

options regarding appeal.

In August 1994, RJRT and other U.S. cigarette manufacturers were named as defendants in an action instituted on behalf of the state of Minnesota on behalf of Blue Cross and Blue Shield of Minnesota to recover the costs of medical expenses paid by the state and by Blue Cross/Blue Shield that were incurred in the treatment of diseases allegedly caused by cigarette smoking. The suit, *Minnesota v. Philip Morris, et al.*, alleges consumer fraud, unlawful and deceptive trade practices, false advertising and restraint of trade, and it seeks injunctive relief and money damages, trebled for violations of the state antitrust law. In March 1995, defendants moved to dismiss all claims of Blue Cross/Blue Shield and to dismiss certain substantive claims of the state of Minnesota and plaintiffs moved to strike certain of the industry's defenses.

In September 1994, the Attorney General of West Virginia filed suit against RJRT, RJRN and twenty-one additional defendants in state court in West Virginia. The lawsuit, *McGraw v. American Tobacco Company, et al.*, is similar to those previously filed in Mississippi and Minnesota. It seeks

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RJR NABISCO HOLDINGS CORP.
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NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 7--CONTINGENCIES--(CONTINUED)

recovery for medical expenses incurred by the state in the treatment of diseases statistically associated with cigarette smoking and requests an injunction against the promotion and sale of cigarettes and tobacco products to minors. The lawsuit also seeks a declaration that the state of West Virginia, as plaintiff, is not subject to the defenses of statute of repose, statute of limitations, contributory negligence, comparative negligence, or assumption of the risk. On May 3, 1995, the judge granted defendants' motion to dismiss eight of the ten causes of action pleaded. The defendants have filed motions to dismiss the remaining two counts but no hearing date has been set.

On February 21, 1995, the state of Florida filed a suit against RJRT and RJRN, along with other industry members, their holding companies and other entities. The state is seeking Medicaid reimbursement under various theories of liability and injunctive relief to: prevent the defendants from engaging in consumer fraud; disclose and publish all research conducted directly or indirectly by the industry; fund a corrective public education campaign on the issues of smoking and health in Florida; prevent the distribution and sale of cigarettes to minors under the age of eighteen; fund clinical smoking cessation programs in the state of Florida; dissolve the Council for Tobacco Research and the Tobacco Institute or divest ownership, sponsorship, or membership in both; and disgorge all profits from sales of cigarettes in Florida. On defendants' motion, the case has been stayed until July 7, 1995. As of May 1, 1995, RJRN has not been served with a copy of the complaint.

The suit by the state of Florida was brought under a statute which was amended effective July 1994 to allow the state to bring an action in its own name against the tobacco industry to recover amounts paid by the state under its Medicaid program to treat illnesses statistically associated with cigarette smoking. The amended statute does not require the state to identify the individual who received medical care, permits a lawsuit to be filed as a class action and eliminates the comparative negligence and assumption of risk defenses. The Florida statute is being challenged on state and federal constitutional grounds in a lawsuit brought by Philip Morris Companies Inc., Associated Industries of Florida, Publix Supermarkets and National Association of Convenience Stores in June 1994. The Florida House and Senate have passed a bill that would repeal the Florida statute retroactively. The Governor has announced an intention to veto that repeal. On February 20, 1995, RJRT and Philip Morris Incorporated filed a petition with the Supreme Court of Florida to prohibit Florida's Agency for Health Care Administration and the Department of Business and Professional Regulation from filing and maintaining a lawsuit

against the tobacco industry under this statute. That petition was denied by the Florida Supreme Court on April 18, 1995. Similar legislation, without Florida's elimination of defenses, has been introduced in the Massachusetts and New Jersey legislatures. RJRT is unable to predict whether other states will enact similar legislation and whether lawsuits will be filed under these statutes or their outcome, if filed.

RJRT understands that a grand jury investigation being conducted in the Eastern District of New York is examining possible violations of criminal law in connection with activities relating to the Council for Tobacco Research--USA, Inc., of which RJRT is a sponsor. RJRT is unable to predict the outcome of this investigation.

RJRT received a civil investigative demand dated January 11, 1994 from the U.S. Department of Justice requesting broad documentary information from RJRT. Although the request appears to focus on tobacco industry activities in connection with product development efforts, it also requests general information concerning contacts with competitors. RJRT is unable to predict the outcome of this investigation.

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RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 7--CONTINGENCIES--(CONTINUED)

Litigation is subject to many uncertainties, and it is possible that some of the tobacco-related legal actions, proceedings or claims could be decided against RJRT or its affiliates or indemnitees. Determinations of liability or adverse rulings against other cigarette manufacturers that are defendants in similar actions, even if such rulings are not final, could adversely affect the litigation against RJRT or its affiliates or indemnitees and increase the number of such claims. Although it is impossible to predict the outcome of such events or their effect on RJRT, a significant increase in litigation activities could have an adverse effect on RJRT. RJRT believes that it has a number of valid defenses to any such actions, including but not limited to those defenses based on preemption under the Cipollone decision, and RJRT intends to defend vigorously all such actions.

The Registrants believe that the ultimate outcome of all pending litigation matters should not have a material adverse effect on the financial position of either of the Registrants; however, it is possible that the results of operations or cash flows of the Registrants in particular quarterly or annual periods or the financial condition of the Registrants could be materially affected by the ultimate outcome of certain pending litigation matters. Management is unable to derive a meaningful estimate of the amount or range of any possible loss in any particular quarterly or annual period or in the aggregate.

NOTE 8--STOCKHOLDERS' EQUITY

Retained earnings (accumulated deficit) at March 31, 1995 includes non-cash expenses related to accumulated trademark and goodwill amortization of approximately \$3.8 billion.

The completion on January 26, 1995 of Nabisco Holdings' initial public offering of 51,750,000 shares of its Class A Common Stock and the corresponding reduction in RJRN's proportionate economic interest in Nabisco Holdings from 100% to approximately 80.5% resulted in an adjustment of approximately \$412 million to the carrying amount of RJRN's investment in Nabisco Holdings. Such adjustment was reflected as additional paid-in capital by RJRN and RJRN Holdings.

The Board of Directors of RJRN Holdings declared an initial quarterly dividend of \$.375 per share which was paid on April 1, 1995 to stockholders of record on March 10, 1995. RJRN Holdings expects to continue to pay a quarterly cash dividend on Common Stock equal to \$.375 per share or \$1.50 per share on an annualized basis.

See Note 9 to the Consolidated Condensed Financial Statements for a discussion of a preferred stock exchange offer under consideration.

NOTE 9--SUBSEQUENT EVENTS

On April 12, 1995, the stockholders of RJRN Holdings approved the one-for-five reverse stock split and the corresponding reduction in the number of authorized shares of Common Stock from 2,200,000,000 to 440,000,000 proposed by the Board of Directors. Accordingly, the rates at which shares of ESOP Convertible Preferred Stock, par value \$.01 per share ("ESOP Preferred Stock"), and Series C Conversion Preferred Stock, par value \$.01 per share ("Series C Preferred Stock"), convert into shares of Common Stock were proportionately adjusted.

On April 27, 1995, RJRN commenced offers to exchange up to approximately \$1.92 billion aggregate principal amount of newly-issued notes and debentures (the "New Notes") of Nabisco for the same amount of notes and debentures (the "Old Notes") issued by RJRN (the "Exchange Offers"). The New Notes would each have principal amounts, maturities and redemption provisions identical to the corresponding Old Notes. Concurrent with the Exchange Offers, RJRN is soliciting consents to

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RJR NABISCO HOLDINGS CORP.

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NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 9--SUBSEQUENT EVENTS--(CONTINUED)

certain indenture modifications from holders of the Old Notes and the holders of approximately \$3.58 billion of its other outstanding debt securities (the "Consent Solicitations"). The Exchange Offers, the Consent Solicitations and certain related transactions described below are designed, among other things, to enable Nabisco to obtain long-term debt financing independent of RJRN and to reduce intercompany debt by approximately \$4.0 billion.

On April 28, 1995, the Registrants entered into (a) a new \$2.75 billion three year revolving credit agreement with various financial institutions and (b) a new \$750 million 364 day credit agreement to support RJRN commercial paper (collectively, the "New Credit Agreements"). Among other things, the New Credit Agreements would remove restrictions which limit the ability of Nabisco to incur debt and allow RJRN to reduce the aggregate amount of commitments under the Credit Agreements from their current level of \$6 billion to \$3.5 billion. The Registrants anticipate replacing the Credit Agreements with the New Credit Agreements when the Exchange Offers and Consent Solicitations are consummated.

On April 28, 1995, Nabisco Holdings and Nabisco entered into a new \$3.5 billion five year revolving credit agreement (the "1995 Nabisco Credit Agreement"). Among other things, the 1995 Nabisco Credit Agreement would permit the prepayment of intercompany debt and the issuance of indebtedness represented by the New Notes, increase Nabisco's committed facility from \$1.5 billion to \$3.5 billion and extend its term from 364 days to five years. Nabisco Holdings and Nabisco anticipate replacing the 1994 Nabisco Credit Agreement with the 1995 Nabisco Credit Agreement when the Exchange Offers and Consent Solicitations are consummated.

Nabisco expects to use the proceeds of borrowings under the 1995 Nabisco Credit Agreement or other sources to repay both the indebtedness of Nabisco Holdings and its subsidiaries to RJRN and its other subsidiaries which remains outstanding after the issuance of the New Notes to RJRN and its borrowings under

the 1994 Nabisco Credit Agreement. The actual amount of borrowings under the 1995 Nabisco Credit Agreement as a result of the foregoing transactions will depend on the amount of Old Notes actually exchanged in the Exchange Offers. If all of the Old Notes are exchanged, approximately \$2.1 billion is expected to be borrowed based on the level of intercompany indebtedness at March 31, 1995. Borrowings will increase if fewer Old Notes are exchanged.

RJRN has used borrowings under its 1991 Credit Agreement to repay \$300 million aggregate principal amount of RJRN's outstanding 9.25% Notes which matured on May 1, 1995 and expects to use additional borrowings under the 1991 Credit Agreement to redeem \$200 million aggregate principal amount of RJRN's outstanding 8.875% Notes, which have been called for redemption on May 23, 1995. RJRN will use the cash proceeds received from Nabisco Holdings and its subsidiaries in repayment of the intercompany debt to reduce outstanding borrowings under the 1991 Credit Agreement.

Following the Exchange Offers and Consent Solicitations, Nabisco expects to issue debt securities in one or more offerings to repay a substantial portion of the indebtedness expected to be outstanding under the 1995 Nabisco Credit Agreement as a result of the repayment of the intercompany debt.

The Exchange Offers are conditioned, among other things, on completion of the Consent Solicitations and the Consent Solicitations are conditioned, among other things, on completion of the Exchange Offers. No assurance can be given that the transactions described above will be consummated.

Nabisco Holdings currently intends to pay quarterly dividends on its common stock at an annual rate of \$.55 per share (approximately \$146 million annually in the aggregate). The first dividend is expected to be paid with respect to the second quarter of 1995 after the end of the quarter. On an

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NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS--(CONTINUED)

NOTE 9--SUBSEQUENT EVENTS--(CONTINUED)

annualized basis, RJRN would receive approximately \$117 million of the aggregate Nabisco Holdings' dividend.

RJRN Holdings is considering an offer to exchange preferred securities issued by a newly-formed controlled affiliate for any or all of its outstanding Series B Cumulative Preferred Stock. The affiliate's principal asset would consist of subordinated notes issued by RJRN Holdings in an amount and with terms sufficient to make payments on the preferred securities. If such an exchange offer were completed, RJRN Holdings' equity would be reduced to reflect the Series B Cumulative Preferred Stock tendered and RJRN Holdings expects that the newly-issued preferred securities would be accounted for as a minority interest. No assurance can be given that any such exchange offer will be made or as to the terms of any such offer.

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ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of RJRN Holdings' financial condition and results of operations should be read in conjunction with the historical financial information included in the Consolidated Condensed Financial Statements.

Results of Operations

Summarized financial data for RJRN Holdings is as follows:

<TABLE>
<CAPTION>

	THREE MONTHS ENDED MARCH 31,		
	1995	1994	% CHANGE
	(DOLLARS IN MILLIONS)		
<S>	<C>	<C>	<C>
NET SALES:			
RJRT.....	\$ 996	\$1,134	(12)%
Tobacco International.....	701	727	(4)
Total Tobacco.....	1,697	1,861	(9)
Domestic Food Group.....	1,364	1,345	1
International Food Group.....	479	366	31
Total Food.....	1,843	1,711	8
	\$3,540	\$3,572	(1)
OPERATING COMPANY CONTRIBUTION*:			
RJRT.....	\$ 370	\$ 387	(4)%
Tobacco International.....	179	179	--
Total Tobacco.....	549	566	(3)
Domestic Food Group.....	201	187	7
International Food Group.....	44	32	38
Total Food.....	245	219	12
Corporate.....	(15)	3	--
	\$ 779	\$ 788	(1)
OPERATING INCOME:			
RJRT.....	\$ 278	\$ 296	(6)%
Tobacco International.....	169	169	--
Total Tobacco.....	447	465	(4)
Domestic Food Group.....	149	135	10
International Food Group.....	39	29	34
Total Food.....	188	164	15
Corporate.....	(15)	3	--
	\$ 620	\$ 632	(2)

</TABLE>

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* Operating income before amortization of trademarks and goodwill.

TOBACCO

The tobacco line of business is conducted by RJRT and R.J. Reynolds Tobacco International, Inc. ("Tobacco International").

The worldwide tobacco business reported net sales of \$1.70 billion in the first quarter of 1995, a decline of 9% from the first quarter of 1994 level of \$1.86 billion. The net sales decline resulted primarily from shipment declines in the domestic tobacco business that exceeded industry averages and

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weakness in the export business in the former Soviet Union and the Middle East. Overall volume decreased 13% in the first quarter of 1995 compared to the first quarter of 1994. Operating company contribution for the worldwide tobacco business of \$549 million in the first quarter of 1995 declined 3% from the first quarter of 1994 level of \$566 million, reflecting a 4% decline in operating company contribution by the domestic tobacco business. The operating company contribution of the international tobacco business remained unchanged. Operating income for the worldwide tobacco business in the first quarter of 1995 of \$447 million declined 4% from \$465 million in the first quarter of 1994, reflecting the lower operating company contribution.

Net sales for RJRT amounted to \$996 million in the first quarter of 1995, a decline of 12% from the first quarter of 1994 level of \$1.13 billion. The decline in net sales resulted primarily from volume losses of 9% in the full price segment (approximately \$113 million) and volume losses of 21% in the saving segment (approximately \$48 million), partially offset by a higher proportion of net sales from full price brands (approximately \$19 million). The volume losses in the full price segment exceeded industry averages and included a sharply lower level of shipments during the first quarter of 1995 resulting from the pattern of wholesale purchases and the erosion of market share of certain brands. The volume losses in the savings segment also exceeded industry averages and reflected an erosion of market share of certain brands in that segment due to RJRT's decision to be more selective in its participation in that segment. RJRT's full price volume as a percentage of total volume amounted to 61% in the first quarter of 1995 compared to 58% in the first quarter of 1994. Overall domestic tobacco volume declined 14% in the first quarter of 1995 compared to the first quarter of 1994. RJRT's operating company contribution was \$370 million in the first quarter of 1995, a 4% decline from the first quarter of 1994 level of \$387 million as reduced promotional and selling expenses (approximately \$40 million) were more than offset by the impact of the decline in net sales. RJRT's operating income was \$278 million in the first quarter of 1995, a decline of 6% from \$296 million in the first quarter of 1994. The decline in operating income reflected the lower RJRT operating company contribution.

During the first quarter of 1995, the pricing stability that began in the fourth quarter of 1993 continued. In addition, profit margins during the first quarter of 1995 showed a slight improvement compared to the fourth quarter of 1994. On May 5, 1995, RJRT announced that it would increase the list price of all of its brands by 3 cents per pack. RJRT's major U.S. competitors thereafter announced similar price increases. RJRT is unable to predict the impact of this price increase or whether the resulting profit margins and pricing are sustainable.

In February 1994, the Commissioner of the U.S. Food and Drug Administration (the "FDA"), which historically has refrained from asserting jurisdiction over cigarette products, stated that he intended to cause the FDA to work with the U.S. Congress to resolve the regulatory status of cigarettes under the Food, Drug and Cosmetic Act. During the second quarter of 1994, hearings were held in this regard and RJRT and other members of the U.S. cigarette industry were asked to provide voluntarily certain documents and other information to Congress and the FDA. RJRT is unable to predict the outcome of any Congressional deliberations or the likelihood that the FDA will assert jurisdiction over cigarettes in some manner. Were the FDA to assert jurisdiction in a manner that materially restricts the availability of cigarettes to consumers, it would likely have a significant adverse effect on RJRT.

In March 1994, the U.S. Occupational Safety and Health Administration ("OSHA") announced proposed regulations that would restrict smoking in the workplace to designated smoking rooms that are separately exhausted to the outside. Although RJRT cannot predict the form of any regulations that may be finally adopted by OSHA, if the proposed regulations are adopted, RJRT expects that many employers who have not already done so would prohibit smoking in the workplace rather than make expenditures necessary to establish designated smoking areas to accommodate smokers. Because many employers currently do not permit smoking in the workplace, RJRT cannot predict the effect of any regulations that may be adopted, but incremental restrictions on smokers could have an adverse effect on cigarette sales and RJRT.

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Various states and local jurisdictions have enacted legislation imposing various restrictions on public smoking, increasing excise taxes and designating a portion of the increased cigarette excise taxes to fund anti-smoking programs, health care programs or cancer research. Many employers have also initiated programs restricting or eliminating smoking in the workplace.

It is not possible to determine what additional federal, state or local legislation or regulations relating to smoking or cigarettes will be enacted or to predict any resulting effect thereof on RJRT, Tobacco International or the cigarette industry generally, but such legislation or regulations could have an adverse effect on RJRT, Tobacco International or the cigarette industry generally.

For a description of certain litigation affecting RJRT and its affiliates, see Note 7 to the Consolidated Condensed Financial Statements.

Tobacco International recorded net sales of \$701 million in the first quarter of 1995, a decrease of 4% from the first quarter of 1994 level of \$727 million, due to an overall volume decline of 13% driven by a disruption in shipment patterns in the former Soviet Union and lower volume levels in the Middle East and the Americas, that more than offset the favorable impact of acquisitions (approximately \$16 million), favorable foreign currency developments (approximately \$13 million) and higher selling prices (approximately \$20 million). Tobacco International's operating company contribution of \$179 million in the first quarter of 1995 was flat compared to the first quarter of 1994 as favorable product mix and lower manufacturing costs offset the impact of the decline in net sales. Tobacco International's operating income of \$169 million in the first quarter of 1995 was equal to the level of operating income in the first quarter of 1994 as a result of no change in operating company contribution.

FOOD

The food business is conducted by operating subsidiaries of Nabisco Holdings. Nabisco's businesses in the United States are comprised of the Nabisco Biscuit Company, the Specialty Products Company, the LifeSavers Company, the Planters Company, the Food Service Company and the Fleischmann's Company (collectively, the "Domestic Food Group"). Nabisco's businesses outside the United States are conducted by Nabisco Brands Ltd and Nabisco International, Inc. ("Nabisco International" and together with Nabisco Brands Ltd, the "International Food Group").

Nabisco Holdings reported net sales of \$1.84 billion in the first quarter of 1995, an increase of 8% from the first quarter of 1994 level of \$1.71 billion, with the Domestic Food Group up 1% and the International Food Group up 31%. The Domestic Food Group increase was primarily attributable to volume gains at the Nabisco Biscuit Company, reflecting the success of new product introductions and product line extensions, and volume gains at the LifeSavers and Food Service Companies (approximately \$55 million), offset in part by sales decreases from the Fleischmann's and Specialty Products Companies (approximately \$37 million). The International Food Group increase was the result of the favorable impact of

the April 1994 acquisition of Establecimiento Modelo Terrabusi S.A. ("Terrabusi") (approximately \$55 million), improved results in Brazil (approximately \$48 million) due to a continuation of the country's second-half 1994 economic recovery, and favorable performance from the Iberian businesses (approximately \$8 million), partially offset by unfavorable business conditions in Mexico (approximately \$14 million) due to the devaluation of the peso.

Nabisco Holdings' operating company contribution was \$245 million in the first quarter of 1995, an increase of 12% from the first quarter of 1994 level of \$219 million, with the Domestic Food Group up 7% and the International Food Group up 38%. The Domestic Food Group's increase for the first quarter of 1995 was primarily due to savings generated from productivity programs (approximately \$23 million) which were offset in part by higher consumer marketing expense at the Nabisco Biscuit Company (approximately \$13 million). The International Food Group's increase in operating company contribution for the first quarter of 1995 was primarily due to the Terrabusi acquisition (approximately \$7 million) and the profit impact of increased net sales in Brazil and Iberia (approximately \$7 million).

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Nabisco Holdings' operating income was \$188 million in the first quarter of 1995, an increase of 15% from the first quarter 1994 level of \$164 million, as a result of the increase in operating company contribution.

Interest and Debt Expense

Consolidated interest and debt expense of \$220 million in the first quarter of 1995 decreased 24% from the corresponding 1994 period, primarily as a result of refinancings that were completed during 1994 and lower debt levels from the application of proceeds from the issuance of preferred stock during 1994 and the issuance of Nabisco Holdings Class A Common Stock during the first quarter of 1995, offset in part by the impact of higher market interest rates.

Net Income

Net income amounted to \$198 million for the first quarter of 1995, an increase of \$3 million from the comparable period last year, primarily as a result of lower interest and debt expense and higher operating income by the food business during the first quarter of 1995 which more than offset the impact of lower operating income by the domestic tobacco business during the first quarter of 1995 and a \$20 million after-tax benefit from certain employee benefit transactions that occurred during the first quarter of 1994.

Restructuring and Realignment Reserve Balances

As of March 31, 1995, the balance of the 1993 restructuring and 1994 headquarters realignment reserves aggregated \$257 million, a decrease of \$34 million from the corresponding balance of \$291 million at December 31, 1994. The amount of after tax cash savings for the three months ended March 31, 1995 was approximately \$70 million. Management expects future annual after tax cash savings to be in the range of approximately \$215 million to \$240 million.

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Liquidity and Financial Condition

Free cash flow, which represents cash available for the repayment of debt and certain other corporate purposes before the consideration of any debt and equity financing transactions, acquisition expenditures and divestiture proceeds, resulted in an outflow of \$277 million and an inflow of \$46 million for the first three months of 1995 and 1994, respectively. The decrease in free cash flow from 1994 to 1995 primarily reflects lower operating company contribution by the domestic tobacco business and higher working capital requirements (primarily higher inventory levels and lower accounts payable and accrued liabilities), capital expenditures and interest payments, which more

than offset the increase in operating company contribution by the food business.

The components of free cash flow are as follows:

<TABLE>
<CAPTION>

	THREE MONTHS ENDED MARCH 31,	
	1995	1994
	(IN MILLIONS)	
<S>	<C>	<C>
OPERATING INCOME.....	\$ 620	\$ 632
Amortization of intangibles.....	159	156
OPERATING COMPANY CONTRIBUTION.....	779	788
Depreciation and other amortization.....	130	128
Increase in operating working capital.....	(539)	(335)
Capital expenditures.....	(146)	(107)
Change in other assets and liabilities.....	8	(59)
OPERATING CASH FLOW*.....	232	415
Taxes paid.....	(63)	(42)
Interest paid.....	(223)	(183)
Dividends paid.....	(79)	(83)
Other, net.....	(144)	(61)
FREE CASH FLOW.....	\$ (277)	\$ 46

</TABLE>

* Operating cash flow, which is used as an internal management measurement for evaluating business performance, includes, in addition to net cash flows from (used in) operating activities as recorded in the Consolidated Condensed Statement of Cash Flows, proceeds from the sale of capital assets less capital expenditures, and is adjusted to exclude income taxes paid and items of a financial nature (such as interest paid, interest income, and other miscellaneous financial income or expense items).

At March 31, 1995, RJRN Holdings had an outstanding total debt level (notes payable and long-term debt, including current maturities) and a total capital level (total debt and stockholders' equity) of approximately \$10.2 billion and \$21.6 billion, respectively, of which total debt was lower by approximately \$900 million and total capital was lower by approximately \$500 million from the corresponding amounts at December 31, 1994. RJRN Holdings' ratio of total debt to total stockholders' equity was 0.90-to-1 at March 31, 1995 and 1.0-to-1 at December 31, 1994. RJRN's ratio of total debt to common equity was 0.90-to-1 at March 31, 1995 and 1.0-to-1 at December 31, 1994. In addition, total current liabilities and long-term debt of RJRN's subsidiaries as of March 31, 1995 was approximately \$3.3 billion.

The aggregate amount of consolidated indebtedness subject to fluctuating interest rates approximated \$3.1 billion at March 31, 1995. This represents a decrease of \$1.2 billion from the year-end 1994 level of \$4.3 billion, primarily due to the application of approximately \$1.2 billion of the net proceeds from the Nabisco Holdings initial public offering to repay a portion of Nabisco's borrowing under the 1994 Nabisco Credit Agreement.

RJRN Holdings' effective interest rate on its consolidated long-term debt increased from 7.7% at December 31, 1994 to 8.0% at March 31, 1995 primarily as a result of a lower proportion of

consolidated indebtedness subject to fluctuating interest rates. Future effective interest rates may vary as a result of RJRN's ongoing management of interest rate exposure and changing market interest rates as well as refinancing activities and changes in the ratings assigned to RJRN's debt securities by independent rating agencies.

The Board of Directors of RJRN Holdings declared an initial quarterly dividend of \$.375 per share of Common Stock, which was paid on April 1, 1995 to stockholders of record as of March 10, 1995. RJRN Holdings expects to continue to pay a quarterly cash dividend on its Common Stock equal to \$.375 per share or \$1.50 per share on an annualized basis. RJRN Holdings believes that neither its Credit Agreements nor the policies of its Board of Directors described in the Registrants' Annual Report on Form 10-K for the fiscal year ended December 31, 1994 will limit its ability to pay these dividends.

The 1991 Credit Agreement is a revolving bank credit facility that provides for the issuance of up to \$800 million of irrevocable letters of credit. During the first quarter of 1995, the commitment under the 1991 Credit Agreement was reduced from \$6.0 billion to \$5.0 billion. Availability under the 1991 Credit Agreement is reduced by the aggregate amount of outstanding borrowings and letters of credit issued under the 1991 Credit Agreement and by the aggregate amount of outstanding borrowings and letters of credit in excess of \$1 billion issued under the 1994 Nabisco Credit Agreement. At March 31, 1995, approximately \$472 million stated amount of letters of credit and approximately \$2.0 billion in borrowings were outstanding under the 1991 Credit Agreement, and \$220 million in borrowings were outstanding under the 1994 Nabisco Credit Agreement. Accordingly, the amount available under the 1991 Credit Agreement at March 31, 1995 was approximately \$2.5 billion.

The 1993 Credit Agreement, under which commitments have been extended through April 1, 1996, provides a back-up line of credit to support commercial paper issuances of up to \$1.0 billion. Availability thereunder is reduced by an amount equal to the aggregate amount of domestic commercial paper outstanding. At March 31, 1995, approximately \$836 million of commercial paper was outstanding. Accordingly, \$164 million was available under the 1993 Credit Agreement at March 31, 1995.

The 1994 Nabisco Credit Agreement is a 364 day, \$1.5 billion revolving bank credit facility that provides for the issuance of up to \$200 million of irrevocable letters of credit. Availability under the 1994 Nabisco Credit Agreement is reduced by an amount equal to the stated amount of letters of credit outstanding and by amounts borrowed under the facility. At March 31, 1995, approximately \$220 million in borrowings and no letters of credit were outstanding under the 1994 Nabisco Credit Agreement. Accordingly, the amount available under the 1994 Nabisco Credit Agreement at March 31, 1995 was approximately \$1.28 billion. Since availability under the 1991 Credit Agreement is reduced by the amount of borrowings and letters of credit in excess of \$1.0 billion under the 1994 Nabisco Credit Agreement, RJRN's borrowing requirements could reduce availability under the 1994 Nabisco Credit Agreement by up to \$500 million. However, it is not currently anticipated that RJRN's borrowing requirements will lead to any such reduction in availability.

See Subsequent Events for a discussion of certain pending and anticipated debt restructurings, including the refinancings of the Credit Agreements and the 1994 Nabisco Credit Agreement.

The payment of dividends and the making of distributions by RJRN Holdings to its stockholders are subject to direct and indirect restrictions under certain financing agreements and debt instruments of the Registrants and their subsidiaries. The Credit Agreements generally restrict dividends and distributions by RJRN Holdings to \$1 billion, plus 50% of cumulative consolidated net income after January 1, 1995, plus the net cash proceeds of up to \$250 million in any twelve month period from issuances of equity securities.

These restrictions have not had and are not expected to have a material effect on the ability of RJRN Holdings to pay its anticipated dividends to its stockholders. The Credit Agreements and certain other financing agreements also limit the ability of RJRN Holdings and its subsidiaries to incur indebtedness, engage in transactions with stockholders and affiliates, create liens, sell or dispose of certain assets and certain subsidiaries' stock and engage in certain mergers or consolidations. RJRN Holdings and RJRN believe that they and their subsidiaries are currently in compliance with all covenants and restrictions imposed by the terms of their indebtedness.

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With certain exceptions, the 1994 Nabisco Credit Agreement limits prepayments of the indebtedness of Nabisco Holdings and its subsidiaries to RJRN and effectively restricts dividends and distributions by Nabisco Holdings to its stockholders, including RJRN, to \$300 million plus 50% of Nabisco's cumulative consolidated net income after January 1, 1995. In general, loans and advances by Nabisco Holdings and its subsidiaries to RJRN are effectively subject to a \$100 million limit. The 1994 Nabisco Credit Agreement also limits the ability of Nabisco Holdings and its subsidiaries to incur indebtedness, engage in transactions with stockholders and affiliates, create liens, sell certain assets and securities and engage in certain mergers or consolidations. These restrictions have not had and are not expected to have a material effect on the ability of Nabisco Holdings to pay its anticipated dividends to RJRN, or on the ability of RJRN to meet its obligations. Nabisco Holdings believes that it and Nabisco are currently in compliance with all restrictions imposed by the terms of Nabisco's indebtedness.

Management expects to consider opportunities to improve RJRN Holdings' and its subsidiaries' capital and/or cost structure as they arise. Such opportunities, if pursued, could involve further acquisitions from time to time, of substantial amounts of securities of RJRN Holdings or its subsidiaries through open market purchases, redemptions, privately negotiated transactions, tender or exchange offers and/or the issuance, from time to time, of additional securities by RJRN Holdings or its subsidiaries. Acquisitions of securities at prices above their book value, together with the accelerated amortization of deferred financing fees attributable to the acquired securities, as applicable, would reduce reported net income and/or stockholders' equity, depending upon the price paid and related financing fees of such acquisitions. RJRN Holdings' and its subsidiaries' ability to take advantage of such opportunities is subject to restrictions in RJRN's debt indentures, the Credit Agreements and the 1994 Nabisco Credit Agreement. See Subsequent Events for a discussion of certain pending and anticipated debt restructurings, including the replacement of the Credit Agreements and the 1994 Nabisco Credit Agreement, and of a preferred stock exchange offer under consideration.

Capital expenditures were \$146 million for the first three months of 1995. The current level of expenditures planned for 1995 is expected to be in the range of approximately \$750 million to \$850 million (approximately 60% Food and 40% Tobacco), which will be funded primarily by cash flows from operating activities. Management expects that its capital expenditure program will continue at a level sufficient to support the strategic and operating needs of the Registrants' businesses.

The amount of cash outlays incurred during the first quarter of 1995 in connection with the restructuring and realignment programs announced in 1993 and 1994 was primarily offset by the after-tax cash savings realized from the restructuring and realignment programs during such period.

Subsequent Events

In April 1995, RJRN Holdings was named a "potentially responsible party" with certain third parties under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) with respect to a site at which a former subsidiary of RJRN had operations. The Registrants currently cannot reasonably estimate the remedial costs, if any, for which they may be liable in connection

with this matter.

On April 12, 1995, the stockholders of RJRN Holdings approved the one-for-five reverse stock split and the corresponding reduction in the number of authorized shares of Common Stock from 2,200,000,000 to 440,000,000 proposed by the Board of Directors. Accordingly, the rates at which shares of ESOP Preferred Stock and Series C Preferred Stock convert into shares of Common Stock were proportionately adjusted.

On April 27, 1995, RJRN commenced offers to exchange up to approximately \$1.92 billion aggregate principal amount of New Notes of Nabisco for the same amount of Old Notes issued by RJRN. The New Notes would each have principal amounts, maturities and redemption provisions identical to the corresponding Old Notes. Concurrent with the Exchange Offers, RJRN is soliciting consents to certain indenture modifications from the holders of the Old Notes and the holders of

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approximately \$3.58 billion of its other outstanding debt securities. The Exchange Offers, the Consent Solicitations and certain related transactions described below are designed, among other things, to enable Nabisco to obtain long-term debt financing independent of RJRN and to reduce intercompany debt by approximately \$4.0 billion.

On April 28, 1995, the Registrants entered into the New Credit Agreements. Among other things, the New Credit Agreements would remove restrictions which limit the ability of Nabisco to incur debt and allow RJRN to reduce the aggregate amount of commitments under the Credit Agreements from their current level of \$6 billion to \$3.5 billion. The Registrants anticipate replacing the Credit Agreements with the New Credit Agreements when the Exchange Offers and Consent Solicitations are consummated.

On April 28, 1995, Nabisco Holdings and Nabisco entered into the 1995 Nabisco Credit Agreement. Among other things, the 1995 Nabisco Credit Agreement would permit the prepayment of intercompany debt and the issuance of indebtedness represented by the New Notes, increase Nabisco's committed facility from \$1.5 billion to \$3.5 billion and extend its term from 364 days to five years. Nabisco Holdings and Nabisco anticipate replacing the 1994 Nabisco Credit Agreement with the 1995 Nabisco Credit Agreement when the Exchange Offers and Consent Solicitations are consummated.

Nabisco expects to use the proceeds of borrowings under the 1995 Nabisco Credit Agreement or other sources to repay both the indebtedness of Nabisco Holdings and its subsidiaries to RJRN and its other subsidiaries which remains outstanding after the issuance of the New Notes to RJRN and its borrowings under the 1994 Nabisco Credit Agreement. The actual amount of borrowings under the 1995 Nabisco Credit Agreement as a result of the foregoing transactions will depend on the amount of Old Notes actually exchanged in the Exchange Offers. If all of the Old Notes are exchanged, approximately \$2.1 billion is expected to be borrowed based on the level of intercompany indebtedness at March 31, 1995. Borrowings will increase if fewer Old Notes are exchanged.

RJRN has used borrowings under its 1991 Credit Agreement to repay \$300 million aggregate principal amount of RJRN's outstanding 9.25% Notes which matured on May 1, 1995 and expects to use additional borrowings under the 1991 Credit Agreement to redeem \$200 million aggregate principal amount of RJRN's outstanding 8.875% Notes, which have been called for redemption on May 23, 1995. RJRN will use the cash proceeds received from Nabisco Holdings and its subsidiaries in repayment of the intercompany debt to reduce outstanding borrowings under the 1991 Credit Agreement.

Following the Exchange Offers and Consent Solicitations, Nabisco expects to issue debt securities in one or more offerings to repay a substantial portion of the indebtedness expected to be outstanding under the 1995 Nabisco Credit Agreement as a result of the repayment of the intercompany debt.

The Exchange Offers are conditioned, among other things, on completion of the Consent Solicitations and the Consent Solicitations are conditioned, among other things, on completion of the Exchange Offers. No assurance can be given that the transactions described above will be consummated.

Nabisco Holdings currently intends to pay quarterly dividends on its common stock at an annual rate of \$.55 per share (approximately \$146 million annually in the aggregate). The first dividend is expected to be paid with respect to the second quarter of 1995 after the end of the quarter. On an annualized basis, RJRN would receive approximately \$117 million of the aggregate Nabisco Holdings' dividend.

RJRN Holdings is considering an offer to exchange preferred securities issued by a newly-formed controlled affiliate for any or all of its outstanding Series B Cumulative Preferred Stock. The affiliate's principal asset would consist of subordinated notes issued by RJRN Holdings in an amount and with terms sufficient to make payments on the preferred securities. If such an exchange offer were completed, RJRN Holdings' equity would be reduced to reflect the Series B Cumulative Preferred Stock tendered and RJRN Holdings expects that the newly-issued preferred securities would be accounted for as a minority interest. No assurance can be given that any such exchange offer will be made or as to the terms of any such offer.

PART II

ITEM 1. LEGAL PROCEEDINGS
TOBACCO-RELATED LITIGATION

During 1995 through May 1, 1995, 11 new actions have been filed or served against RJRT and/or its affiliates or indemnitees, including 1 action purporting to be a class action, and 5 actions, including a consolidated suit containing class action allegations, were dismissed or otherwise resolved in favor of RJRT and or its affiliates or indemnitees without trial. As of May 1, 1995, 61 active cases were pending against RJRT and/or its affiliates or indemnitees, 59 in the United States, and two in Canada. The United States cases are in 24 states and are distributed as follows: twelve in Louisiana, eight in Texas, four in each of California, Florida and Indiana, three in each of Mississippi and Tennessee, two in each of Alabama, Colorado, Minnesota and West Virginia and one in each of Ohio, Illinois, Kansas, New Jersey, Washington, Oklahoma, Massachusetts, Nevada, South Carolina, New Hampshire, New York, Missouri and Pennsylvania. Of the 59 active cases in the United States, 32 are pending in state court and 27 in federal court.

Of the 61 active cases pending as of May 1, 1995 (i) seven cases purport to be class actions on behalf of many thousands of individuals; purported classes include individuals claiming to be addicted to cigarettes, flight attendants alleging personal injury from exposure to environmental tobacco smoke in their workplace and parents claiming that an RJRT advertising campaign constitutes an unfair trade practice under state law, (ii) one case involves plaintiffs purporting to act as private attorneys general to claim that an RJRT advertising campaign constitutes an unfair business practice under state law and (iii) three cases are suits brought by individual states and a fourth by a state and health insurer on various theories to recoup expenses incurred in the treatment of diseases purportedly associated with cigarette smoking and to enjoin certain marketing practices.

For additional information about tobacco-related litigation and legal proceedings, see Note 7-- Contingencies--Tobacco-Related Litigation of Notes to Consolidated Condensed Financial Statements.

Litigation is subject to many uncertainties, and it is possible that some of the tobacco-related legal actions, proceedings or claims could be decided against RJRT or its affiliates or indemnitees. Determinations of liability or adverse rulings against other cigarette manufacturers that are defendants in similar actions, even if such rulings are not final, could adversely affect the litigation against RJRT or its affiliates or indemnitees and increase the number of such claims. Although it is impossible to predict the outcome of such events or their effect on RJRT, a significant increase in litigation activities could have an adverse effect on RJRT. RJRT believes that it has a number of valid defenses to any such actions, including but not limited to those defenses based on preemption under the Cipollone decision, and RJRT intends to defend vigorously all such actions.

The Registrants believe that the ultimate outcome of all pending litigation matters should not have a material adverse effect on either of the Registrants' financial position; however, it is possible that the results of operations or cash flows of the Registrants in a particular quarterly or annual period or the financial condition of the Registrants could be materially affected by the ultimate outcome of certain pending litigation matters. Management is unable to derive a meaningful estimate of the amount or range of such possible loss in any particular quarterly or annual period or in the aggregate.

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

The matters indicated below were voted upon at the annual meeting of stockholders of RJRN Holdings held on April 12, 1995. Holders of Common Stock, Series C Preferred Stock and ESOP Preferred Stock, were entitled to vote upon the proposals to elect directors, ratify the appointment of auditors and amend the Certificate of Incorporation to effect a one-for-five reverse split of Common

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Stock and to reduce the outstanding shares of Common Stock, as well as on four stockholder proposals. Holders of shares of Common Stock were also entitled to vote as a separate class on the proposal to amend the Certificate of Incorporation. At the meeting, there were entitled to vote 1,362,183,643 shares of Common Stock, 26,675,000 shares of Series C Preferred Stock and 15,322,144 shares of ESOP Preferred Stock.

(a) Election of Eight Directors.

NAME	VOTES FOR	VOTES WITHHELD
John T. Chain, Jr.	1,140,519,434	9,054,645
Julius L. Chambers	1,140,072,909	9,501,170
John L. Clendenin	1,140,618,897	8,955,182
H. John Greeniaus	1,138,950,571	10,623,508
Charles M. Harper	1,139,727,348	9,846,731
James W. Johnston	1,138,781,264	10,792,815
John G. Medlin, Jr.	1,140,144,794	9,429,285
Rozanne L. Ridgway	1,140,403,470	9,170,609

(b) Ratification of Appointment of Deloitte & Touche LLP as Independent Auditors.

For:	1,139,567,516
Against:	5,708,053
Abstain:	4,298,510

(c) Amend Certificate of Incorporation to effect a one-for-five reverse split of the Common Stock.

<TABLE>
<CAPTION>

COMMON STOCK, SERIES C
 PREFERRED STOCK AND ESOP
 PREFERRED
 STOCK VOTING TOGETHER AS A
 SINGLE CLASS:

COMMON STOCK
 VOTING AS A
 SEPERATE
 CLASS:

<S>	<C>	<C>
For:	1,113,096,670	1,078,674,940
Against:	26,940,109	25,411,297
Abstain:	9,537,300	9,224,356

(d) Stockholder Proposal on Equal Employment Reporting.

For:	87,876,254
Against:	775,433,963
Abstain:	55,858,670
Broker Non-Votes:	230,405,192

(e) Stockholder Proposal on Nicotine Manipulation.

For:	75,192,346
Against:	792,155,206
Abstain:	51,821,335
Broker Non-Votes:	230,405,192

(f) Stockholder Proposal on Warning Labels for Advertising and Promotional Items.

For:	88,283,238
Against:	800,307,688
Abstain:	30,577,961
Broker Non-Votes:	230,405,192

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(g) Stockholder Proposal to Spin Off Tobacco Business.

For:	57,296,733
Against:	830,775,403
Abstain:	31,096,751
Broker Non-Votes:	230,405,192

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

<TABLE>	<C>	<S>
*3.1		Certificate of Amendment to Amended and Restated Certificate of Incorporation of RJR Nabisco Holdings Corp. filed April 12, 1995.
*3.1(a)		Composite of the Amended and Restated Certificate of Incorporation of RJR Nabisco Holdings Corp. as amended to and including April 12, 1995.
4.1		Registrants agree to furnish copies of any instruments defining the rights of holders of long-term debt of the Registrants and their consolidated subsidiaries that does not exceed 10 percent of the total assets of the Registrants and their consolidated subsidiaries to the Securities and Exchange Commission upon request.
*11		RJR Nabisco Holdings Corp. Computation of Earnings Per Share for the three months ended March 31, 1995 and 1994.
*12		RJR Nabisco, Inc. Computation of Ratio of Earnings to Fixed Charges for the three months ended March 31, 1995.
*27.1		RJR Nabisco Holdings Corp. Financial Data Schedule
*27.2		RJR Nabisco, Inc. Financial Data Schedule

* Filed herewith.

(b) Reports on Form 8-K

None.

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SIGNATURE

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

RJR NABISCO HOLDINGS CORP.
RJR NABISCO, INC.

(Registrants)

Date: May 10, 1995

/s/ ROBERT S. ROATH

.....
Robert S. Roath,
Senior Vice President and
Chief Financial Officer

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EXHIBIT INDEX

<TABLE>

- <C> <S>
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- *12 RJR Nabisco, Inc. Computation of Ratio of Earnings to Fixed Charges for the three months ended March 31, 1995.
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- *27.2 RJR Nabisco, Inc. Financial Data Schedule

</TABLE>

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* Filed herewith.

CERTIFICATE OF AMENDMENT

of the

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

of

RJR NABISCO HOLDINGS CORP.

(originally incorporated under the name of RJR Holdings Corp.)

* * * * *

Pursuant to Section 242 of the General

Corporation Law of the State of Delaware

* * * * *

RJR Nabisco Holdings Corp., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), DOES HEREBY CERTIFY:

FIRST: The first paragraph of ARTICLE FOURTH of the Amended and Restated Certificate of Incorporation is hereby amended to read as follows:

The total number of shares of capital stock that the Corporation is authorized to issue is 590,000,000 shares of which 440,000,000 shares are Common Stock, par value \$.01 each, and 150,000,000 shares of which are shares of preferred stock, par value \$.01 each (hereinafter referred to as "Preferred Stock"). The Preferred Stock may be issued from time to time in one or more series with such distinctive designations as may be stated in the resolution or resolutions providing for the issue of such stock from time to time adopted by the Board of Directors or a duly authorized committee thereof. The resolution or resolutions providing for the issue of shares of a particular series shall fix, subject to applicable laws and the provisions of this ARTICLE FOURTH, for each such series the number of shares

constituting such series and the designations and powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by resolution or resolutions of the Board of Directors or a duly authorized committee thereof under the General Corporation

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Law of the State of Delaware. The number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock of the Corporation irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware or any corresponding provision hereafter enacted.

At the effective time of this amendment to the Certificate of Incorporation of the Corporation, each five (5) issued and outstanding shares of Common Stock of the Corporation shall be combined into one (1) share of validly issued, fully paid and nonassessable Common Stock of the Corporation. No scrip or fractional shares shall be issued by reason of this amendment.

SECOND: Such amendment was approved both by the holders of a majority of the outstanding stock of the Corporation entitled to vote thereon and by the holders of a majority of the outstanding Common Stock of the Corporation, voting as a separate class, at a meeting duly called and held on April 12, 1995 upon notice in accordance with the provisions of Section 222 of the General Corporation Law of the State of Delaware.

THIRD: Such amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused its corporate seal to be affixed and this Certificate to be signed by its Senior Vice President and attested to by its Assistant Secretary, this 12th day of April, 1995.

RJR Nabisco Holdings Corp.

By: _____
Jo-Ann Ford
Senior Vice President, Law
and Secretary

[CORPORATE SEAL]

ATTEST:

By: _____
Suzanne P. Jenney
Assistant Secretary

[Composite, as amended to and including April 12, 1995]

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
RJR NABISCO HOLDINGS CORP.

(Originally incorporated as RJR Holdings Corp. on October 25, 1988)

ARTICLE FIRST

The name of the Corporation is RJR Nabisco Holdings Corp.

ARTICLE SECOND

The registered office and registered agent of the Corporation is The Prentice-Hall Corporation System, Inc., 32 Loockerman Square, Suite L-100, City of Dover, County of Kent, Delaware 19901.

ARTICLE THIRD

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE FOURTH

The total number of shares of capital stock that the Corporation is authorized to issue is 590,000,000 shares of which 440,000,000 shares are Common Stock, par value \$.01 each, and 150,000,000 shares of which are shares of preferred stock, par value \$.01 each (hereinafter referred to as "Preferred Stock"). The Preferred Stock may be issued from time to time in one or more series with such distinctive designations as may be stated in the resolution or resolutions providing for the issue of such stock from

time to time adopted by the Board of Directors or a duly authorized committee thereof. The resolution or resolutions providing for the issue of shares of a particular series shall fix, subject to applicable laws and the provisions of this ARTICLE FOURTH, for each such series the number of

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shares constituting such series and the designations and powers, preferences and relative participating, optional or other special rights and qualifications, limitations or restrictions thereof, including, without limiting the generality of the foregoing, such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by resolution or resolutions of the Board of Directors or a duly authorized committee thereof under the General Corporation Law of the State of Delaware. The number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock of the Corporation irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware or any corresponding provision hereafter enacted.

At the effective time of this amendment to the Certificate of Incorporation of the Corporation, each five (5) issued and outstanding shares of Common Stock of the Corporation shall be combined into one (1) share of validly issued, fully paid and nonassessable Common Stock of the Corporation. No scrip or fractional shares shall be issued by reason of this amendment.

The following is a statement of the number, designation, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the ESOP Convertible Preferred Stock of the Corporation:

(1) Designation; Issuance. (i) The designation of the series of Preferred Stock authorized by this resolution shall be "ESOP Convertible Preferred Stock" (the "ESOP Convertible Preferred Stock") consisting of 15,625,000 shares. The stated value of the ESOP Convertible Preferred Stock shall be \$16.00 per share, which value does not represent a determination by the Board of Directors for the purposes of the capital accounts.

(ii) Shares of ESOP Convertible Preferred Stock shall be issued only to a trustee acting on behalf of an employee stock ownership plan or other employee benefit plan of the Corporation. In the event of any transfer of shares of ESOP Convertible Preferred Stock except for (a) any

transfer to any such plan trustee or (b) any transfer to, or with respect to, a participant in any such plan to, or with respect to, whom ESOP Convertible Preferred Stock is distributed by any such plan trustee in satisfaction of the distribution requirements of any such plan or any investment elections provided to participants pursuant to any such plan, unless the Corporation shall have otherwise previously consented to such transfer, the shares of ESOP Convertible Preferred Stock so transferred, upon such transfer and without

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any further action by the Corporation or the holder, shall be automatically converted into shares of Common Stock (as defined in paragraph (2) hereof) on the terms otherwise provided for the conversion of shares of ESOP Convertible Preferred Stock into shares of Common Stock pursuant to paragraph (7) hereof and no such transferee shall have any of the powers (including voting powers), preferences and relative, participating, optional or special rights ascribed to shares of ESOP Convertible Preferred Stock hereunder but, rather, only the powers (including voting powers) and rights pertaining to the Common Stock into which such shares of ESOP Convertible Preferred Stock shall be so converted. Certificates representing shares of ESOP Convertible Preferred Stock shall be legended to reflect such restrictions on transfer. Notwithstanding the foregoing provisions of this paragraph (1)(ii), shares of ESOP Convertible Preferred Stock (a) shall be redeemable by the Corporation upon the terms and conditions provided by paragraphs (5), (6) and (9) hereof and (b) may be converted into shares of Common Stock as provided by paragraph (7) hereof and the shares of Common Stock issued upon such conversion may be transferred by the holder thereof as permitted by law.

(2) Rank. The ESOP Convertible Preferred Stock shall, with respect to dividend rights and rights on liquidation, winding up and dissolution, rank prior to the Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation and on a parity with the Cumulative Convertible Preferred Stock, par value \$0.01 per share, stated value \$25.00 per share, of the Corporation (the "Cumulative Convertible Preferred Stock"). All equity securities of the Corporation to which the ESOP Convertible Preferred Stock ranks prior, including the Common Stock, are collectively referred to herein as the "Junior Securities," all equity securities of the Corporation with which the ESOP Convertible Preferred Stock ranks on a parity, including Cumulative Convertible Preferred Stock, are collectively referred to herein as the "Parity Securities" and all equity securities of the Corporation (other than convertible debt securities) to which the ESOP Convertible Preferred Stock ranks junior, whether with respect to dividends or upon liquidation, dissolution, winding-up or otherwise, are collectively referred to herein as the "Senior

Securities." The ESOP Convertible Preferred Stock shall be subject to the creation of Junior Securities, Parity Securities and Senior Securities.

(3) Dividends. (i)(a) Subject to paragraph (3)(i)(b), the holders of the shares of ESOP Convertible Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available for the payment of dividends, dividends initially at the rate of 7.8125% of the stated value (\$1.25) per share per annum (the "Dividend Rate"), and no more. Subject to paragraph (3)(i)(b), such dividends shall be payable in semi-annual payments, one half on

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January 2, (or, at the option of the Corporation, the preceding December 27) and one half on July 2 of each year commencing with January 2, 1992 (or, at the option of the Corporation, December 27, 1991) (each of such dates being a "Dividend Payment Date"), in preference to dividends on the Junior Securities. Subject to paragraph (3)(i)(b), such dividends shall be paid to the holders of record at the close of business on the tenth business day immediately preceding each Dividend Payment Date (each of such dates being a "Dividend Payment Record Date"). Subject to paragraph (3)(i)(b), each of such semi-annual dividends shall be fully cumulative and shall accrue (whether or not declared), without interest, from the previous Dividend Payment Date, except that with respect to the first dividend, such dividend shall accrue from the date of initial issuance. Dividends payable for the first dividend period and any partial dividend period (excluding for this purpose dividends paid on December 27 in lieu of January 2) shall be calculated on the basis of a 360-day year of twelve 30-day months.

(b) Notwithstanding anything to the contrary in paragraph (3)(i)(a), in the event that after the eighth (8th) anniversary of the initial date of issuance, for at least twenty (20) trading days within any period of thirty (30) consecutive trading days (such thirty (30) day period being hereinafter referred to as the "Adjustment Period"), the closing price on the New York Stock Exchange Consolidated Tape (or any successor composite tape reporting transactions on national securities exchanges) or, if such a composite tape shall not be in use or shall not report transactions in the Common Stock, the last reported sales price regular way on the principal national securities exchange on which the Common Stock is listed or admitted to trading (which shall be the national securities exchange on which the greatest number of shares of Common Stock has been traded during such Adjustment Period) or, if there is no transaction on any such day in any such situation, the mean of the bid and asked prices on such day or, if the Common Stock is not listed or admitted to trading on any such exchange, the closing price, if reported, or, if the closing price is not reported, the average of the closing bid and asked prices as

reported by the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ") or a similar source selected from time to time by the Corporation for the purpose, of the Common Stock equals or exceeds one hundred percent (100%) of the Conversion Price (as defined in paragraph (7) hereof) (giving effect to any adjustments required by paragraph (7) hereof), the Corporation may elect, in its sole discretion, to cease to pay dividends on the ESOP Convertible Preferred Stock on the Dividend Payment Dates at the Dividend Rate. Notice of the Corporation's election to discontinue paying dividends on the ESOP Convertible Preferred Stock at the Dividend Rate shall be given within ten (10) trading days of the conclusion of the Adjustment Period. Upon the Corporation giving notice of its election as set forth above, the Dividend Rate shall cease to be effective as the applicable rate for subsequent ESOP Convertible Preferred Stock dividend periods commencing the next succeeding regular Dividend Payment Date (the

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"Adjustment Date") provided that following the payment of the dividend due pursuant to paragraph (3)(i)(a) on such date there shall be no cumulative dividends on the ESOP Convertible Preferred Stock remaining accrued and unpaid. Notice shall be given by first class mail, postage prepaid, to each holder of record as of the conclusion of the Adjustment Period of the shares at such holder's address as the same appears on the stock register of the Corporation.

Commencing on the Adjustment Date, dividends, if any, on the ESOP Convertible Preferred Stock will be payable, when, as and if declared, in amounts equal to such dividends as may be declared and paid on the Common Stock, if any, multiplied by the number of shares of Common Stock issuable upon the conversion of the ESOP Convertible Preferred Stock on the record date or record dates for such Common Stock dividends (calculated quarterly if dividends are then paid quarterly on the Common Stock, without interest), and no more. After the Adjustment Date, dividends, if any, on the ESOP Convertible Preferred Stock will be paid on the next succeeding Common Stock dividend payment date and thereafter semi-annually on the same date as Common Stock dividends are paid; provided, however, that the dividends payable in respect of the first ESOP Convertible Preferred Stock dividend payment period following the Adjustment Date shall be adjusted as set forth in paragraph (3)(a) to the extent that the number of days in such dividend payment period is less than the number of days in the corresponding Common Stock quarterly dividend payment period. The record dates for such ESOP Convertible Preferred Stock dividends shall be the same date as may be established as the record date for the corresponding Common Stock dividend. Notwithstanding the foregoing, in the event that a Common Stock dividend is paid in respect of the initial quarterly period

comprising any semi-annual dividend payment period for the ESOP Convertible Preferred Stock but no dividend is declared and paid in respect of the Common Stock for the second quarterly period comprising any such semi-annual dividend payment period for the ESOP Convertible Preferred Stock, a dividend equal to the dividend paid on the Common Stock for the initial quarterly period and no more shall be paid on the ESOP Convertible Preferred Stock on the date 90 days from the date that the last dividend was paid on the Common Stock (or, if such date is not a business day, on the next succeeding business day) and the record date for such dividend on the ESOP Convertible Preferred Stock shall be the date 90 days from the record date in respect of such last dividend paid on the Common Stock (or, if such date is not a business day, on the next succeeding business day). In the event that no dividends are paid on the Common Stock in respect of the two calendar quarters comprising an ESOP Convertible Preferred Stock dividend payment period, no dividends will be payable or paid on the ESOP Convertible Preferred Stock in respect of such period. Notwithstanding anything to the contrary contained herein, no dividends shall be payable pursuant to this paragraph (3) (i) (b) to the extent that the corresponding Common Stock dividend is paid other than in cash.

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(ii) All dividends paid with respect to shares of the ESOP Convertible Preferred Stock pursuant to paragraph (3) (i) hereof shall be paid pro rata to the holders entitled thereto.

(iii) Prior to the Adjustment Date, no full dividends shall be declared by the Board of Directors or paid or set apart for payment by the Corporation on any Parity Securities for any period unless full dividends calculated in accordance with paragraph (3) (i) have been or contemporaneously are declared and paid or declared and a sum set apart sufficient for such payment on the ESOP Convertible Preferred Stock for all dividend periods terminating on or prior to the date of payment, or setting apart for payment, of such full dividends on such Parity Securities. Prior to the Adjustment Date, if any dividends are not paid in full as aforesaid upon the shares of the ESOP Convertible Preferred Stock and any other Parity Securities, all dividends declared upon shares of the ESOP Convertible Preferred Stock and any other Parity Securities shall be declared pro rata so that the amount of dividends declared per share of the ESOP Convertible Preferred Stock and such Parity Securities shall in all cases bear to each other the same ratio that accrued dividends per share on the ESOP Convertible Preferred Stock and such Parity Securities bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the ESOP Convertible Preferred Stock or any other Parity Securities which may be in arrears. Any dividend not paid pursuant to paragraph (3) (i) (a) hereof or

this paragraph (3)(iii) shall be fully cumulative and shall accrue (whether or not declared), without interest, as set forth in paragraph (3)(i)(a) hereof. On and after the Adjustment Date, dividends on the ESOP Convertible Preferred Stock shall cease to be cumulative.

(iv) (a) Holders of shares of the ESOP Convertible Preferred Stock shall be entitled to receive the dividends provided for in paragraph (3)(i) hereof in preference to and in priority over any dividends upon any of the Junior Securities.

(b) So long as any shares of the ESOP Convertible Preferred Stock are outstanding, the Board of Directors shall not declare, and the Corporation shall not pay or set apart for payment any dividend on any of the Junior Securities or make any payment on account of, or set apart for payment money for a sinking or other similar fund for, the repurchase, redemption or other retirement of, any of the Junior Securities or Parity Securities or any warrants, rights or options exercisable for or convertible into any of the Junior Securities or Parity Securities (other than purchases or redemptions pursuant to or in accordance with employee stock subscription agreements entered into between the Corporation and certain of its or its subsidiaries' directors, officers and key employees and purchases and redemptions pursuant to employee benefit plans and other than the repurchase, redemption or other retirement of any Parity

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Securities or any warrants, rights or options exercisable for or convertible into any of the Parity Securities made pursuant to the requirements of paragraph (5)(ii) hereof and other than the repurchase, redemption or other retirement of debentures or other debt securities that are convertible or exchangeable into any of the Junior Securities or Parity Securities), or make any distribution in respect of the Junior Securities, either directly or indirectly, and whether in cash, obligations or shares of the Corporation or other property (other than distributions or dividends in Junior Securities to the holders of Junior Securities), and shall not permit any corporation or other entity directly or indirectly controlled by the Corporation to purchase or redeem any of the Junior Securities or Parity Securities or any warrants, rights, calls or options exercisable for or convertible into any of the Junior Securities or Parity Securities (other than purchases or redemptions pursuant to or in accordance with employee stock subscription agreements entered into between the Corporation and certain of its or its subsidiaries' directors, officers and key employees and purchases and redemptions pursuant to employee benefit plans and other than the repurchase, redemption or other retirement of any Parity Securities or any warrants, rights or options exercisable for or convertible into any of the Parity Securities made pursuant to the

requirements of paragraph (5) (ii) hereof and other than the repurchase, redemption or other retirement of debentures or other debt securities that are convertible or exchangeable into any of the Junior Securities or Parity Securities) unless prior to or concurrently with such declaration, payment, setting apart for payment, repurchase, redemption or other retirement or distribution, as the case may be, any and all accrued and unpaid dividends on shares of the ESOP Convertible Preferred Stock not paid on the dates provided for in paragraph (3) (i) hereof (including any and all accrued dividends not paid by reason of the terms and conditions of paragraph (3) (i) (a) or paragraph (3) (iii) hereof but excluding any and all accrued dividends not yet payable by reason of the terms and conditions of paragraph (3) (i) (b) hereof) shall have been or be paid.

(v) Subject to the foregoing provisions of this paragraph (3) and paragraph (7) (vi) (c), the Board of Directors may declare and the Corporation may pay or set apart for payment dividends and other distributions on any of the Junior Securities or Parity Securities, and may repurchase, redeem or otherwise retire any of the Junior Securities or Parity Securities or any warrants, rights or options exercisable for or convertible into any of the Junior Securities or Parity Securities, and the holders of the shares of the ESOP Convertible Preferred Stock shall not be entitled to share therein.

(4) Liquidation Preference. (i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of ESOP Convertible Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for

distribution to its stockholders an amount in cash equal to \$16.00 for each share outstanding, plus an amount in cash equal to any and all accrued but unpaid dividends thereon to the date of liquidation, dissolution or winding up before any payment shall be made or any assets distributed to the holders of any of the Junior Securities; provided, however, that for the purposes of this paragraph (4) (i), to the extent that after the Adjustment Date dividends have been declared and paid on the Common Stock and the corresponding dividend has not yet been paid on the ESOP Convertible Preferred Stock, the amount to be paid in respect of the ESOP Convertible Preferred Stock in accordance with paragraph (3) (i) (b) in light of the declaration and payment of such dividend on the Common Stock shall be deemed to be an accrued but unpaid dividend. If the assets of the Corporation are not sufficient to pay in full the liquidation payments payable to the holders of outstanding shares of the ESOP Convertible Preferred Stock and any Parity Securities, then the holders of all such

shares shall share ratably in such distribution of assets in accordance with the amount which would be payable on such distribution if the amounts to which the holders of outstanding shares of ESOP Convertible Preferred Stock and the holders of outstanding shares of such Parity Securities are entitled were paid in full. Except as provided in this paragraph (4)(i), holders of ESOP Convertible Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution or winding up of the affairs of the Corporation.

(ii) For the purposes of this paragraph (4), neither the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation nor the consolidation or merger of the Corporation with or into one or more other corporations nor the consolidation or merger of one or more corporations with or into the Corporation shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up.

(5) Redemption. (i) The Corporation may redeem at its option the ESOP Convertible Preferred Stock, at any time in whole or from time to time in part after the eighth (8th) anniversary of the initial date of issuance or on or before said date if permitted by paragraphs (5)(iv) through (5)(viii) or paragraph (9) at the redemption price per share set forth below, together with accrued and unpaid dividends thereon to the date of redemption (or, if pursuant to paragraphs (5)(iv), (5)(v), (5)(vii) and (5)(viii), at the redemption price set forth therein), without interest, to the extent the Corporation shall have funds legally available for such payment. For the purposes of this paragraph (5)(i), to the extent that after the Adjustment Date dividends have been declared and paid on the Common Stock and the corresponding dividend has not yet been paid on the ESOP Convertible Preferred Stock, the amount to be paid in respect of the ESOP Convertible Preferred Stock in accordance with paragraph (3)(i)(b) in light of the declaration and payment of such

dividend on the Common Stock shall be deemed to be an accrued but unpaid dividend.

If redeemed during the 12 month period beginning on April 10 in each of the years set forth below, the redemption price per share shall be as follows:

Year	Redemption Price Per Share
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1991	\$ 17.250
1992	17.125
1993	17.000
1994	16.875
1995	16.750
1996	16.625
1997	16.500
1998	16.375
1999	16.250
2000	16.125
2001 and thereafter	16.000

(ii) So long as any shares of the ESOP Convertible Preferred Stock are outstanding, any repurchase, redemption or other retirement of any Parity Securities or any warrants, rights or options exercisable for or convertible into any of the Parity Securities (other than the repurchase, redemption or other retirement of debentures or other debt securities that are convertible or exchangeable into any Parity Securities) must be made on a pro rata basis with the ESOP Convertible Preferred Stock so that the total redemption prices of the shares redeemed of ESOP Convertible Preferred Stock and such Parity Securities shall in all cases bear to each other the same ratio that the total redemption prices of all shares outstanding on the applicable date of ESOP Convertible Preferred Stock and such Parity Securities bear to each other, unless prior to or concurrently with such repurchase, redemption or other retirement, as the case may be, any and all accrued and unpaid dividends on shares of the ESOP Convertible Preferred Stock not paid on the dates provided for in paragraph (3) (i) hereof (including any and all accrued dividends not paid by reason of the terms and conditions of paragraph (3) (i) or paragraph (3) (iii) hereof) shall have been or be paid.

(iii) Shares of ESOP Convertible Preferred Stock that have been issued and reacquired in any manner, including shares purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of the class of Preferred Stock undesignated as to series and may be redesignated and reissued as part of any series of the Preferred Stock.

(iv) In the event of a change in the federal tax law or regulations of the United States of America or of an interpretation or application of such law or regulations or of a determination by a court of competent jurisdiction, which in any case has the effect of precluding the

Corporation from claiming (other than for purposes of calculating any alternative minimum tax) any of the tax deductions for dividends paid on the ESOP Convertible Preferred Stock when such dividends are used as provided under Section 404(k)(2) of the Internal Revenue Code of 1986, as amended (the "Code"), as in effect on the date shares of ESOP Convertible Preferred Stock are initially issued, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in paragraph (5)(i) hereof, elect to redeem any or all of the ESOP Convertible Preferred Stock for (a) the amount payable in respect of such shares upon liquidation of the Corporation pursuant to paragraph (4) hereof, if such election is made within one year of the occurrence of such event or (b) the amount payable in respect of such shares as set forth in paragraph (5)(i) hereof, if such election is made after one year from the occurrence of such event.

(v) In the event that the Corporation certifies to the holders of the ESOP Convertible Preferred Stock that the Corporation has determined in good faith that either the RJR Nabisco Capital Accumulation Plan, as amended as of March 15, 1991, as the same may be further amended, or any successor plan (the "Plan") is not qualified within the meaning of Section 401(a) of the Code or the RJR Nabisco Employee Stock Ownership Program forming a part thereof, as the same may be amended, or any successor program (the "Program"), is not an "employee stock ownership plan" within the meaning of Section 4975(e)(7) of the Code, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in paragraph (5)(i) hereof, elect to redeem any or all of the ESOP Convertible Preferred Stock for (a) the amount payable in respect of such shares upon liquidation of the Corporation pursuant to paragraph (4) hereof, if such election is made within one year of the occurrence of such event or (b) the amount payable in respect of such shares as set forth in paragraph (5)(i) hereof, if such election is made after one year from the occurrence of such event.

(vi) In the event that the Plan or the Program is, or contributions thereto are, expressly terminated by the Corporation, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in paragraph (5)(i) hereof, elect to redeem any or all the ESOP Convertible Preferred Stock for the amount payable in respect of such shares as set forth in paragraph (5)(i) hereof.

(vii) In the event and to the extent that redemption of shares of ESOP Convertible Preferred Stock is necessary or appropriate to provide for the distributions required to be made under, or to satisfy an investment election provided to

participants in accordance with, the Program, the Corporation may, in its

sole discretion and notwithstanding anything to the contrary in paragraph (5) (i) hereof, elect to redeem any or all ESOP Convertible Preferred Stock for the amount payable in respect of such shares upon liquidation of the Corporation pursuant to paragraph (4) hereof.

(viii) In the event and to the extent that shares of ESOP Convertible Preferred Stock are transferred to a participant in the Plan, the Corporation may, in its sole discretion and notwithstanding anything to the contrary in paragraph (5) (i) hereof, elect to redeem such shares of ESOP Convertible Preferred Stock for the amount payable in respect of such shares upon liquidation of the Corporation pursuant to paragraph (4) hereof.

(ix) In the event and to the extent that the Corporation is required under Section 409(h) (1) (B) of the Code or any successor provision of law to redeem shares of ESOP Convertible Preferred Stock, the Corporation shall, notwithstanding anything to the contrary contained in paragraph (5) (i) hereof, redeem such shares of ESOP Convertible Preferred Stock for the amount equal to the greater of (i) the value as of the applicable valuation date (as determined under the Program) of the shares of Common Stock into which such shares of ESOP Convertible Preferred Stock are convertible as of such date or (ii) the amount payable in respect of such shares of upon liquidation of the Corporation pursuant to paragraph (4) hereof.

(x) Notwithstanding anything to the contrary contained herein, subject to the final sentence of this paragraph (5) (x), if there is, or if as a result of any redemption pursuant to paragraph (5) (ix) hereof there would be, a default or event of default under any debt instrument or agreement of the Corporation or any of its subsidiaries or any other material obligation of the Company or any of its subsidiaries, or an impairment of capital or violation of the General Corporation Law of the State of Delaware (collectively, an "Event"), then any such redemption shall be deferred until the first business day that such redemption may occur without any such Event existing or resulting. If at any time consummation of any redemptions to be made by the Corporation pursuant to paragraph (5) (ix) would result in an Event, then the Corporation shall make redemptions of shares of ESOP Convertible Preferred Stock pro rata (on the basis of the proportion of the number of shares of ESOP Convertible Preferred Stock which each holder shall have specified to be redeemed for the maximum number of shares of ESOP Convertible Preferred Stock permitted without resulting in an Event; provided, however, that the provisions of the first sentence of this paragraph (5) (x) shall apply in respect of all shares of ESOP Convertible Preferred Stock not redeemed. Until all of such ESOP Convertible Preferred Stock is redeemed and paid for by the Corporation, the shares of ESOP Convertible Preferred Stock which are required to be redeemed under Section 409(h) (1) (B) of the Code or any successor provision of law which

are not redeemed in accordance with this paragraph (5)(x) shall have priority, on a pro rata basis, over other redemptions by the Corporation pursuant to this paragraph (5). Notwithstanding the terms of this paragraph (5)(x) or paragraph (5)(ix), to the extent the deferral provided for by this paragraph (5)(x) would not be permitted by the Code or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any successor provision of law, the provisions of paragraph (5)(ix) shall, to the extent permitted by the Code and ERISA, be of no force or effect where an Event would occur without regard to such deferral.

(xi) The Corporation, at its option, may make payment of the redemption price required to be paid upon redemption of shares of ESOP Convertible Preferred Stock (other than pursuant to paragraph (9)(iv)) in cash or in shares of Common Stock, or in securities of comparable value that constitute "qualifying employer securities" with respect to a holder of ESOP Convertible Preferred Stock within the meaning of Section 409(1) of the Code and Section 407(d)(5) of ERISA or any successor provisions of law ("Qualifying Employer Securities") or in any combination of such shares, Qualifying Employer Securities and cash, any such shares and Qualifying Employer Securities to be valued for such purpose at their Fair Market Value (as defined in paragraph (7)(vi)(e) hereof) as of the date of redemption.

(6) Procedure for Redemption. (i) In the event that fewer than all the outstanding shares of ESOP Convertible Preferred Stock are to be redeemed other than pursuant to paragraph (5)(vii), (5)(viii) or (5)(ix) or paragraph (9)(iv), the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be selected pro rata, except that in any redemption of fewer than all the outstanding shares of ESOP Convertible Preferred Stock, the Corporation may redeem all shares held by any holders of a number of shares not to exceed 100, including all shares held by holders who, after giving effect to such redemption, would hold less than 100 shares, as may be specified by the Corporation.

(ii) In the event the Corporation shall redeem shares of ESOP Convertible Preferred Stock other than pursuant to paragraph 5(vii), 5(viii) or (5)(ix) or paragraph (9)(iv), subject to applicable law, written notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 20 days nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed at such holder's address as the same appears on the stock register of the Corporation; provided, however, that no failure to give such notice nor any defect therein shall affect the validity of the proceeding for the redemption of any shares of ESOP Convertible Preferred Stock to be redeemed except as to the holder to whom the Corporation has failed to give said

notice or except as to the holder whose notice was defective. Each such notice shall state: (a) the redemption date; (b) the number of

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shares of ESOP Convertible Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed from such holder, the number of shares to be redeemed from such holder; (c) the redemption price; (d) that shares of ESOP Convertible Preferred Stock called for redemption may be converted in accordance with, and subject to the terms of, paragraph (7) hereof at any time prior to the date fixed for redemption (unless the Corporation shall default in payment of the redemption price, in which case such right shall not terminate at such date); (e) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; (f) the method and form of payment of the redemption price; and (g) that dividends on the shares to be redeemed will cease to accrue on such redemption date.

(iii) Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing cash, Qualifying Employer Securities or shares of Common Stock for the payment of the redemption price of the shares called for redemption) dividends on the shares of ESOP Convertible Preferred Stock so called for redemption, to the extent theretofore accruing, shall cease to accrue and said shares shall no longer be deemed to be outstanding and shall have the status of authorized but unissued shares of Preferred Stock, undesignated as to series, and all rights of the holders thereof as holders of the ESOP Convertible Preferred Stock (except the right to receive from the Corporation the redemption price and any and all accrued and unpaid dividends) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the redemption price aforesaid together with payment of any and all accrued and unpaid dividends, without interest. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(7) Conversion. (i) Upon the terms and in the manner set forth in this paragraph (7) and subject to the provisions for adjustment contained in paragraph (7) (vi), each share of the ESOP Convertible Preferred Stock shall be convertible, at the option of the holder thereof at any time, upon surrender to the Corporation of the certificates for the shares to be converted, into a number of fully paid and nonassessable shares of Common Stock equal to the aggregate stated value of the ESOP

Convertible Preferred Stock to be converted divided by a conversion price (the "Conversion Price") of \$16.00; provided, however, that the right to convert shares of ESOP Convertible Preferred Stock that have been called for redemption pursuant to paragraphs (5), (6) and (9)(iii) shall terminate at the close of business on the date fixed for redemption, unless the Corporation shall default in making payment of the amount payable upon such redemption and

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provided, further, that the right to convert shares of ESOP Convertible Preferred Stock as to which a notice of redemption has been delivered pursuant to paragraph (9)(iv) shall terminate at the close of business on the fifth (5th) business day prior to the consummation of the transaction described in paragraph (9)(ii), unless the Corporation or the successor of the Corporation shall default in making payment of the amount payable upon such redemption.

(ii) In order to convert shares of the ESOP Convertible Preferred Stock, the holder thereof shall (a) deliver a properly completed and duly executed written notice of election to convert specifying the number of the shares of the ESOP Convertible Preferred Stock to be converted and the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued to the Corporation at its principal office or at the office of any agency which may be maintained for such purpose (the "Conversion Agent"), (b) surrender the certificate for such shares of ESOP Convertible Preferred Stock to the Corporation or the Conversion Agent, accompanied, if so required by the Corporation or the Conversion Agent, by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation or the Conversion Agent duly executed by the holder or his attorney duly authorized in writing, and (c) pay any transfer or similar tax required by paragraph (7)(viii).

(iii) (a) Conversion shall be deemed to have been effected at the close of business on the date (the "Conversion Date") on which the Corporation or the Conversion Agent shall have received the notice of election to convert, the surrendered certificate, any required payments and all other required documents. Immediately upon conversion, the rights of the holders of converted shares of ESOP Convertible Preferred Stock shall cease and the persons entitled to receive the shares of Common Stock upon the conversion of such shares of ESOP Convertible Preferred Stock shall be treated for all purposes as having become the record owners of such shares of Common Stock but no allowance or adjustment shall be made in respect of dividends payable to holders of Common Stock of record on any date prior to the Conversion Date. Conversion shall be at the Conversion Price in effect at such time on such date, unless the stock transfer books of the

Corporation shall be closed on that date, in which event such person or persons shall be deemed to have become such holder or holders of record of the Common Stock at the close of business 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 shares shall have been surrendered and such notice and any required payments received by the Corporation.

(b) As promptly as practicable after the Conversion Date, the Corporation shall deliver or cause to be delivered at the office or agency of the Conversion Agent, to or upon the

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written order of the holder of the surrendered shares of ESOP Convertible Preferred Stock, a certificate or certificates representing the number of fully paid and nonassessable shares of Common Stock into which such shares of ESOP Convertible Preferred Stock have been converted in accordance with the provisions of this paragraph (7), and any cash payable in respect of fractional shares as provided in paragraph (7) (iv).

(c) Upon the surrender of a certificate representing shares of ESOP Convertible Preferred Stock that is converted in part, the Corporation shall issue or cause to be issued for the holder a new certificate representing shares of ESOP Convertible Preferred Stock equal in number to the unconverted portion of the shares of ESOP Convertible Preferred Stock represented by the certificate so surrendered.

(iv) (a) No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon the conversion of any shares of ESOP Convertible Preferred Stock. Instead of any fractional interest in a share of Common Stock which would otherwise be deliverable upon the conversion of a share of ESOP Convertible Preferred Stock, the Corporation shall either (A) pay to the holder of such share (a "Fractional Shareholder") an amount in cash (computed to the nearest cent) equal to the Fair Market Value thereof (as defined in paragraph (7) (vi) (e)) on the business day next preceding the Conversion Date or (B) follow the procedures set forth in paragraph (7) (iv) (b). If more than one share shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate stated value of the shares of ESOP Convertible Preferred Stock so surrendered.

(b) The Corporation may, in lieu of paying cash to Fractional Shareholders as provided in paragraph (7) (iv) (a), issue, in full payment of the Corporation's obligation with respect to such fractional interests,

shares of Common Stock equal to the aggregate of such fractional interests of such Fractional Shareholder and other Fractional Shareholders (aggregated over a reasonable period of time, but not in any event more than 20 business days, and rounded upwards to the nearest whole share) to an agent (which, without limiting the generality of the foregoing, may be the trustee under the Plan or Program, the Corporation or the Conversion Agent) (the "Transfer Agent") appointed by the Corporation for such Fractional Shareholders for sale promptly by the Transfer Agent on behalf of the Fractional Shareholders. The Transfer Agent will remit promptly to such Fractional Shareholders their proportionate interest in the net proceeds (following the deduction of applicable transaction costs and computed to the nearest cent) from such sale.

(v) The holders of shares of ESOP Convertible Preferred Stock at the close of business on a record date for an

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ESOP Convertible Preferred Stock dividend (including a Dividend Payment Record Date) shall be entitled to receive the dividend payable on such shares (except that holders of shares called for redemption on a redemption date occurring between such record date and the corresponding dividend payment date (including a corresponding Dividend Payment Date) shall not be entitled to receive such dividend on such dividend payment date (including a Dividend Payment Date) but instead will receive accrued and unpaid dividends to such redemption date) on the corresponding dividend payment date (including a Dividend Payment Date) notwithstanding the conversion thereof or the Corporation's default in payment of the dividend due on such dividend payment date (including a Dividend Payment Date).

(vi) The Conversion Price shall be subject to adjustment as follows:

(a) If the Corporation shall (v) declare or pay a dividend on its outstanding Common Stock in shares of Common Stock or make a distribution to all holders of its Common Stock in shares of Common Stock, (w) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock, (x) combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock or (y) issue by reclassification of its shares of Common Stock other securities of the Corporation, then the Conversion Price in effect immediately prior thereto shall be adjusted so that the holder of any shares of ESOP Convertible Preferred Stock thereafter converted shall be entitled to receive the number and kind of shares of Common Stock or other securities that the holder would have owned or have been entitled to receive after the happening of any of the events described above had such shares of ESOP

Convertible Preferred Stock been converted immediately prior to the happening of such event or any record date with respect thereto. An adjustment made pursuant to this paragraph (7) (vi) (a) shall become effective on the date of the dividend payment, subdivision, combination or issuance retroactive to the record date with respect thereto, if any, for such event. Such adjustment shall be made successively.

(b) If the Corporation shall issue to all holders of its Common Stock rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock at a price per share that is lower than the then Fair Market Value per share of Common Stock (as defined in paragraph (7) (vi) (e) below) at the record date mentioned below, the Conversion Price shall be adjusted in accordance with the following formula:

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$$AC = C \times \frac{O + \frac{(N \times P)}{M}}{O + N}$$

where

AC = the adjusted Conversion Price.

C = the current Conversion Price.

O = the number of shares of Common Stock outstanding on the record date.

N = the number of additional shares of Common Stock offered.

P = the offering price per share of the additional shares.

M = the Fair Market Value per share of Common Stock on the record date.

The adjustment shall be made successively whenever any such rights, options, warrants or convertible or exchangeable securities are issued, and shall become effective immediately after the record date for the determination of stockholders entitled to receive the rights, options, warrants or convertible or exchangeable securities. Upon the expiration of any such rights, options, warrants or convertible or exchangeable securities, if any thereof shall not have been exercised, then the

Conversion Price shall be increased by the amount of the initial adjustment of the Conversion Price pursuant to this paragraph (7) (vi) (b) in respect of such expired rights, options, warrants or convertible or exchangeable securities.

(c) In case the Corporation shall distribute to all holders of its outstanding Common Stock any shares of capital stock of the Corporation (other than Common Stock) or evidences of its indebtedness or assets (excluding ordinary cash dividends, which may be an initial cash dividend, payable out of consolidated earnings or earned surplus (both of which to be calculated for these purposes excluding charges for amortization of goodwill and other intangibles) and dividends or distributions referred to in paragraphs (7) (vi) (a) and (b) above and, after the Adjustment Date, excluding all cash dividends) or rights or warrants to subscribe for or purchase any of its securities (excluding those referred to in paragraph (7) (vi) (b) above) (any of the foregoing being hereinafter in this paragraph (7) (vi) (c) called the "Securities or Assets"), then in each such case, unless the Corporation elects to reserve shares or other units of such Securities or Assets for distribution to the holders of the ESOP Convertible Preferred Stock upon the conversion of the shares of ESOP Convertible Preferred Stock so that any such holder converting shares of ESOP Convertible Preferred Stock will

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receive upon such conversion, in addition to the shares of the Common Stock to which such holder is entitled, the amount and kind of such Securities or Assets which such holder would have received if such holder had, immediately prior to the record date for the distribution of the Securities or Assets, converted its shares of ESOP Convertible Preferred Stock into Common Stock, 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 of such distribution by a fraction of which the numerator shall be the Fair Market Value per share (as defined in paragraph (7) (vi) (e) below) of the Common Stock on the record date mentioned below less the then fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive, final and binding) of the portion of the capital stock or assets or evidences of indebtedness so distributed or of such rights or warrants applicable to one share of Common Stock, and of which the denominator shall be the Fair Market Value per share of the Common Stock on such record date. Such adjustment shall become effective immediately after the record date for the determination of stockholders entitled to receive such distribution, except as provided in paragraph (7) (vi) (h) below.

(d) If the Corporation shall, after the date hereof, sell and

issue any shares of Common Stock, rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock (excluding (i) shares of Common Stock, rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock issued in any of the transactions described in paragraphs (7) (vi) (a) and (7) (vi) (b) above; (ii) stock options and shares of Common Stock issued to, or issuable upon the exercise of stock options granted to or to be granted to, employees or directors of the Corporation or its subsidiaries; (iii) shares of Common Stock issuable upon exercise of warrants previously issued; (iv) shares issued upon conversion of the Senior Converting Debentures Due 2009 of the Corporation; and (v) shares issued upon conversion of shares of ESOP Convertible Preferred Stock), at a price per share (determined, in the case of rights, options, warrants or convertible or exchangeable securities, by dividing (x) the total amount received or receivable by the Corporation in consideration of the sale and issuance of such rights, options, warrants or convertible or exchangeable securities, plus the total consideration payable to the Corporation upon exercise or conversion or exchange thereof, by (y) the total number of shares of Common Stock covered by such rights, options, warrants or convertible or exchangeable securities) that is lower than the then Fair Market Value per share of Common Stock immediately

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prior to such sale and issuance, then in each case the Conversion Price shall be adjusted in accordance with the following formula:

$$AC = C \times \frac{(N \times P) + O}{O + N}$$

where

AC = the adjusted Conversion Price.

C = the current Conversion Price.

O = the number of shares of Common Stock outstanding on the issue date.

N = the number of additional shares of Common Stock offered.

P = the offering price per share of the additional shares.

M = the Fair Market Value per share of Common Stock on the issue date.

For the purposes of such adjustments, the shares of Common Stock which the holder of any such rights, options, warrants, or convertible or exchangeable securities shall be entitled to subscribe for or purchase shall be deemed to be issued and outstanding as of the date of such sale and issuance, and the consideration received or receivable by the Corporation therefor shall be deemed to be the consideration received or receivable by the Corporation (plus any discounts or commissions in connection therewith) for such rights, options, warrants or convertible or exchangeable securities, plus the consideration or premiums stated in such rights, options, warrants or convertible or exchangeable securities to be paid for the shares of Common Stock purchasable thereby. In case the Corporation shall (i) sell and issue shares of Common Stock for a consideration consisting, in whole or in part, of property other than cash or its equivalent or (ii) sell and issue shares of Common Stock together with one or more other securities as part of a unit at a price per unit, then in determining the "price per share" and the "consideration received or receivable by the Corporation" for purposes of the first sentence and the immediately preceding sentence of this paragraph (7) (vii) (d), the Board of Directors shall determine, in its discretion, the fair market value of said property or the shares of Common Stock then being sold as part of such unit, as the case may be, and such determinations, if made in good faith, shall be conclusive, final and binding. The adjustment shall be made successively whenever any such shares of Common Stock, rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase

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shares of Common Stock are issued for less than the Fair Market Value, subject to the exceptions noted above, and shall become effective immediately after the issue date.

Notwithstanding the foregoing, no adjustments of any kind under this paragraph (7) (vi) (d) shall be made with respect to the sale and issuance by the Corporation of any shares of Common Stock, rights, options, warrants or convertible or exchangeable securities containing the right to subscribe for or purchase shares of Common Stock in connection with either (1) an underwritten public offering or (2) any transaction as to which the Corporation has received a written opinion of a nationally recognized investment bank stating that the transaction is fair to the Corporation from a financial point of view.

(e) For the purposes of any computation under paragraphs (7) (vi) (b), (c) and (d) and for the purposes of paragraphs (5) (xi), (7) (iv) (a) and (9) (iii), the Fair Market Value as to shares of Common Stock or any other class of capital stock or securities of the Corporation or any other issuer that are traded shall at any date shall be deemed to be the average of the daily closing prices for the twenty (20) consecutive trading days commencing on the thirtieth (30th) trading day prior to the date in question. The closing price for each day shall be (x) if the shares of Common Stock or any other class of capital stock or securities of the Corporation or any other issuer are listed or admitted to trading on a national securities exchange, the closing price on the New York Stock Exchange Consolidated Tape (or any successor composite tape reporting transactions on national securities exchanges) or, if such a composite tape shall not be in use or shall not report transactions in such securities, the last reported sales price regular way on the principal national securities exchange on which such securities are listed or admitted to trading (which shall be the national securities exchange on which the greatest number of shares of stock or the greatest aggregate principal amount of debt securities has been traded during such twenty (20) consecutive trading days), or, if there is no transaction on any such day in any such situation, the mean of the bid and asked prices on such day, or (y) if such securities are not listed or admitted to trading on any such exchange, the closing price, if reported, or, if the closing price is not reported, the average of the closing bid and asked prices as reported by NASDAQ or a similar source selected from time to time by the Corporation for the purpose. In the event such closing prices are unavailable, the Fair Market Value shall be deemed to be, subject to applicable law, the fair market value as determined in good faith by the Board of Directors, on the basis of such relevant factors as it in good faith considers, in the reasonable judgment of the Board of Directors, appropriate.

(f) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or

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decrease of at least 1% of such price; provided, however, that any adjustments which by reason of this paragraph (7) (vi) (f) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this paragraph (7) (vi) shall be made to the nearest one-hundredth of a cent or to the nearest one-hundredth of a share, as the case may be.

(g) For the purposes of this paragraph (7) (vi) and paragraph (7) (ix), the term "shares of Common Stock" shall mean (x) the class of

stock designated as the Common Stock of the Corporation at the date hereof or (y) any other class of stock resulting from successive changes or reclassifications of such shares consisting solely of changes in par value, or from no par value to par value. In the event that at any time, as a result of an adjustment made pursuant to paragraphs (7)(vi)(a) or (c) above, the holders of ESOP Convertible Preferred Stock shall become entitled to receive any securities other than shares of Common Stock, thereafter the number of such other securities so issuable upon conversion of the shares of ESOP Convertible Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of ESOP Convertible Preferred Stock contained in this paragraph (7)(vi).

(h) Notwithstanding the foregoing, in any case in which this paragraph (7)(vi) provides that an adjustment shall become effective immediately after a record date for an event, the Corporation may defer until the occurrence of such event (A) issuing to the holder of any share of ESOP Convertible Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder any amount in cash in lieu of any fraction pursuant to paragraph (7)(iv).

(i) If the Corporation shall make any dividend or distribution on the Common Stock or issue any Common Stock, other capital stock or other security of the Corporation or any rights or warrants to purchase or acquire any such security, which transaction does not result in an adjustment to the Conversion Price pursuant to the foregoing provisions of this paragraph (7)(vi), the Board of Directors of the Corporation may consider whether such action is of such a nature that an adjustment to the Conversion Price should equitably be made in respect of such transaction. If in such case the Board of Directors of the Corporation determines that an adjustment to the Conversion Price should be made, an adjustment shall be made effective as of such date as is determined by the Board of Directors of the Corporation. The determination of the Board of Directors of the Corporation as to whether an adjustment to the Conversion Price should be made pursuant to the foregoing provisions of this paragraph (7)(vi)(i), and, if so, as to what adjustment should be

made and when, shall be conclusive, final and binding on the Corporation and all stockholders of the Corporation. The Corporation shall be entitled to make such additional adjustments in the Conversion Price, in addition to those required by the foregoing provisions of this paragraph (7)(vi), as shall be necessary in order that any dividend or distribution in shares of

capital stock of the Corporation, subdivision, reclassification or combination of shares of stock of the Corporation or any recapitalization of the Corporation shall not be taxable to holders of the Common Stock.

(vii) Whenever the Conversion Price is adjusted as herein provided, the Chief Financial Officer, Treasurer or Controller of the Corporation shall compute the adjusted Conversion Price in accordance with the foregoing provisions and shall prepare a certificate setting forth such adjusted Conversion Price and showing in reasonable detail the facts upon which such adjustment is based, which certificate shall be conclusive, final and binding evidence of the correctness of the adjustment. A copy of such certificate shall be filed promptly with any Conversion Agent. Promptly after delivery of any such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each share of ESOP Convertible Preferred Stock at his last address as shown on the stock books of the Corporation.

(viii) The Corporation will pay any and all documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on the conversion of shares of ESOP Convertible Preferred Stock; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any registration of transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the registered holder of ESOP Convertible Preferred Stock converted or to be converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(ix) (a) The Corporation shall at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Common Stock or its issued Common Stock held in its treasury, or both, for the purpose of effecting the conversion of the ESOP Convertible Preferred Stock, the full number of shares of Common Stock then deliverable upon the conversion of all outstanding shares of the ESOP Convertible Preferred Stock.

(b) Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value (if any) of the Common Stock issuable upon conversion of the ESOP Convertible Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may

validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Conversion Price.

(8) Voting Rights. (i) The holders of record of shares of ESOP Convertible Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this paragraph (8) or as otherwise provided by law. The holders of ESOP Convertible Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock of the Corporation, voting together with the holders of Common Stock as one class; provided, however, that the ESOP Convertible Preferred Stock shall not be entitled to vote on any increase or decrease in the number of authorized shares of any class or classes of stock. Each share of the ESOP Convertible Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of ESOP Convertible Preferred Stock could be converted on the record date for determining the stockholders entitled to vote, rounded to the nearest one-tenth of a vote; it being understood that whenever the Conversion Price is adjusted as provided in paragraph (7) hereof, the voting rights of the ESOP Convertible Preferred Stock shall also be similarly adjusted.

(ii) So long as any shares of the ESOP Convertible Preferred Stock are outstanding (except when notice of the redemption of all outstanding shares of ESOP Convertible Preferred Stock has been given pursuant to paragraphs (5) and (6) or paragraph (9) (iii) and cash, Qualifying Employer Securities or shares of Common Stock have been deposited in trust for such redemption), the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of ESOP Convertible Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, amend the Certificate of Incorporation or this Certificate of Designation so as to affect materially and adversely the specified rights, preferences, privileges or voting rights of shares of ESOP Convertible Preferred Stock.

(iii) (a) The creation, authorization or issuance of any shares of any Junior Securities, Parity Securities or Senior Securities, (b) the creation of any indebtedness of any kind of the Corporation, or (c) subject to paragraph (8) (i), the increase or decrease in the amount of authorized capital stock of any class, including Preferred Stock, shall not require the consent

of the holders of ESOP Convertible Preferred Stock and shall not be deemed

to affect materially and adversely the rights, preferences, privileges or voting rights of shares of ESOP Convertible Preferred Stock.

(9) Consolidation, Merger, etc. (i) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged solely for or changed, reclassified or converted solely into shares of any successor or resulting company (including the Corporation) that constitute Qualifying Employer Securities that are common stock or common equity with respect to a holder of ESOP Convertible Preferred Stock within the meaning of Section 409(1) of the Code and Section 407(d)(5) of ERISA, or any successor provision of law, and, if applicable, for a cash payment in lieu of fractional shares, if any, then, in such event, the shares of ESOP Convertible Preferred Stock of such holder shall be converted into or exchanged for and shall become preferred shares of such successor or resulting company, having in respect of such company insofar as possible (taking into account, without limitation, any requirements relating to the listing of such preferred shares on any national securities exchange or the qualification of such preferred shares for trading in any over-the-counter market) the same powers, preferences and relative, participating, optional or other special rights (including the redemption rights provided by paragraphs (5) and (6) hereof and this paragraph (9)), and the qualifications, limitations or restrictions thereon, that the ESOP Convertible Preferred Stock had immediately prior to such transaction; provided, however, that after such transaction each share of stock into which the ESOP Convertible Preferred Stock is so converted or for which it is exchanged shall be convertible, pursuant to the terms and conditions provided by paragraph (7) hereof, into the number and kind of Qualifying Employer Securities receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Convertible Preferred Stock could have been converted pursuant to paragraph (7) hereof immediately prior to such transaction and provided, further, that if by virtue of the structure of such transaction, a holder of Common Stock is required to make an election with respect to the nature and kind of consideration to be received in such transaction, then such election shall be deemed to be solely for Qualifying Employer Securities (together, if applicable, with a cash payment in lieu of fractional shares) with the effect provided above on the basis of the number and kind of Qualifying Employer Securities receivable by a holder of the number of shares of Common Stock into which the shares of ESOP Convertible Preferred Stock could have been converted pursuant to paragraph (7) hereof immediately prior to such transaction (it being understood that if the kind or amount of Qualifying Employer Securities receivable in respect of each share of Common Stock

upon such transaction is not the same for each such share, then the kind and amount of Qualifying Employer Securities deemed to be receivable in respect of each share of Common Stock for purposes of this proviso shall be the kind and amount so receivable per share of Common Stock by a plurality of such shares). The rights of the ESOP Convertible Preferred Stock as preferred shares of such successor resulting company shall successively be subject to adjustments pursuant to paragraph (7) hereof after any such transaction as nearly equivalent to the adjustments provided for by such paragraph prior to such transaction.

(ii) In the event that the Corporation shall consummate any consolidation or merger or similar transaction, however named, pursuant to which the outstanding shares of Common Stock are by operation of law exchanged for or changed, reclassified or converted into other shares or securities or cash or any other property, or any combination thereof, other than any such consideration which is constituted solely of Qualifying Employer Securities that are common stock or common equity (as referred to in paragraph (9)(i)) and cash payments, if applicable, in lieu of fractional shares, outstanding shares of ESOP Convertible Preferred Stock shall, without any action on the part of the Corporation or any holder thereof but subject to paragraph (9)(iii) and (9)(iv), be automatically converted immediately prior to the consummation of such merger, consolidation or similar transaction into shares of Common Stock at the conversion rate then in effect so that each share of ESOP Convertible Preferred Stock shall, by virtue of such transaction and on the same terms as apply to the holders of Common Stock, be converted into or exchanged for the aggregate amount of shares, securities, cash or other property (payable in like kind) receivable by a holder of the number of shares of Common Stock into which such shares of ESOP Convertible Preferred Stock could have been converted immediately prior to such transaction if such holder of Common Stock failed to exercise any rights of election as to the kind or amount of shares, securities, cash or other property receivable upon such transaction (provided that, if the kind or amount of shares, securities, cash or other property receivable upon such transaction is not the same for each non-electing share, then the kind and amount of shares, securities, cash or other property receivable upon such transaction for each non-electing share shall be the kind and amount so receivable per share by a plurality of non-electing shares).

(iii) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar transaction described in paragraph (9)(ii), then the Corporation shall as soon as practicable thereafter (and in any event at least ten (10) business days before consummation of such transaction) give notice of such agreement and the material terms thereof to each holder of ESOP Convertible Preferred Stock and

the Corporation shall have the right to elect, to the extent permitted by applicable law, by written notice to the holders, to redeem such ESOP Convertible Preferred Stock upon consummation of such transaction (if and when such transaction is consummated), out of funds legally available therefor, in lieu of any cash or other securities which such holder would otherwise be entitled to receive under paragraph (9)(ii) hereof, for the amount payable in respect of shares of ESOP Convertible Preferred Stock upon a redemption by the Corporation pursuant to paragraph (5)(i) hereof, which amount may be paid in cash or in shares of Common Stock or common stock of the successor of the Corporation or in Qualifying Employer Securities of the Corporation or the successor of the Corporation or in any combination thereof, any such shares and Qualifying Employer Securities to be valued for such purpose at their Fair Market Value (as defined in paragraph (7)(vi)(e)). No such notice of redemption shall be effective unless given to the holders prior to the close of business of the tenth (10th) business day prior to consummation of such transaction, unless the holders shall waive such prior notice, but any notice or redemption so given prior to such time may be withdrawn by notice of withdrawal given to the holders prior to the close of business on the tenth (10th) business day prior to consummation of such transaction.

(iv) In the event the Corporation shall enter into any agreement providing for any consolidation or merger or similar transaction described in paragraph (9)(ii) and the Corporation shall not elect pursuant to paragraph (9)(iii) to redeem the ESOP Convertible Preferred Stock, to the extent permitted by applicable law, each such holder shall have the right to elect, by written notice to the Corporation, to receive, upon consummation of such transaction (if and when such transaction is consummated), out of funds legally available therefor, from the Corporation or the successor of the Corporation, in redemption of such ESOP Convertible Preferred Stock, in lieu of any cash or other securities which such holder would otherwise be entitled to receive under paragraph (9)(ii) hereof, a cash payment equal to the amount payable in respect of shares of ESOP Convertible Preferred Stock upon a redemption by the Corporation pursuant to paragraph (5)(i) hereof. No such notice of redemption shall be effective unless given to the Corporation prior to the close of business of the fifth (5th) business day prior to consummation of such transaction, unless the Corporation or the successor of the Corporation shall waive such prior notice, but any notice or redemption so given prior to such time may be withdrawn by notice of withdrawal given to the Corporation prior to the close of business on the fifth (5th) business day prior to consummation of such transaction.

(10) Limitations. Except as may otherwise be required by law, the shares of ESOP Convertible Preferred Stock shall not have any powers, preferences or relative, participating, optional or other special rights

in this resolution (as such resolution may be amended from time to time) or otherwise in the Certificate of Incorporation of the Corporation.

The following is a statement of the number, designation, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the Series B Cumulative Preferred Stock of the Corporation:

(1) Designation. The designation of the series of Preferred Stock authorized by this resolution shall be "Series B Cumulative Preferred Stock" (the "Series B Preferred Stock") consisting of 50,000 shares. The stated value of the Series B Preferred Stock shall be \$25,000 per share, which value does not represent a determination by the Board of Directors for the purposes of the capital accounts.

(2) Rank. The Series B Preferred Stock shall, with respect to dividend rights and rights on liquidation, dissolution and winding up, rank prior to the Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation and on a parity with the Cumulative Convertible Preferred Stock, par value \$0.01 per share and stated value \$25.00 per share (the "Cumulative Convertible Preferred Stock"), and the ESOP Convertible Preferred Stock, par value \$0.01 per share and stated value \$16.00 per share (the "ESOP Convertible Preferred Stock"), of the Corporation. All equity securities of the Corporation to which the Series B Preferred Stock ranks prior, including the Common Stock, are collectively referred to herein as the "Junior Securities," all equity securities of the Corporation with which the Series B Preferred Stock ranks on a parity, including the Cumulative Convertible Preferred Stock and the ESOP Convertible Preferred Stock, are collectively referred to herein as the "Parity Securities" and all equity securities of the Corporation (other than convertible debt securities) to which the Series B Preferred Stock ranks junior, whether with respect to dividends or upon liquidation, dissolution, winding-up or otherwise, are collectively referred to herein as the "Senior Securities." The Series B Preferred Stock shall be subject to the creation of Junior Securities, Parity Securities and Senior Securities.

(3) Dividends. (i) The holders of outstanding shares of Series B Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends at the rate per annum of 9 1/4% of the stated value (\$25,000) per share and no more, payable in arrears on the first business day of each March, June, September and December,

commencing December 1, 1993 (each of such dates being a "Dividend Payment Date"). If any Dividend Payment Date shall be or be declared a national or New York State holiday or if banking

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institutions in the State of New York shall be closed because of a banking moratorium or otherwise on such date, then the Dividend Payment Date shall be on the next succeeding day on which such banks shall be open. Each such dividend shall be payable to holders of record as they appear on the stock books of the Corporation at the close of business on each record date, which shall be the 15th day immediately preceding each such Dividend Payment Date (each of such dates being a "Dividend Payment Record Date"). Each of such quarterly dividends shall be fully cumulative and shall accrue (whether or not declared) on a daily basis, without interest, from the previous Dividend Payment Date, except that the first dividend shall accrue, without interest, from the date of initial issuance of the Series B Preferred Stock. Accrued and unpaid dividends shall not bear interest. Dividends will cease to accrue in respect of the Series B Preferred Stock on the date of their earlier redemption pursuant to paragraph (4), unless the Corporation shall default in providing funds for the payment of the redemption price of the shares called for redemption pursuant to paragraphs (4) and (5). Dividends payable on the Series B Preferred Stock for the first dividend period and any partial dividend period will be computed on the basis of a 360-day year consisting of twelve 30-day months.

(ii) No full dividends shall be declared by the Board of Directors or paid or set apart for payment by the Corporation on any Parity Securities for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum set apart sufficient for such payment on the Series B Preferred Stock through the most recent Dividend Payment Date. If any dividends are not paid or set apart in full, as aforesaid, upon the shares of the Series B Preferred Stock and any Parity Securities, all dividends declared upon shares on the Series B Preferred Stock and any Parity Securities shall be declared pro rata so that the amount of dividends declared per share on the Series B Preferred Stock and such Parity Securities shall in all cases bear to each other the same ratio that accrued dividends per share on the Series B Preferred Stock and such Parity Securities bear to each other. Unless full cumulative dividends, if any, accrued on all outstanding shares of the Series B Preferred Stock have been or contemporaneously are declared and paid or declared and a sum set apart sufficient for such payment through the most recent Dividend Payment Date, no dividend shall be declared or paid or set apart for payment or other distribution declared or made on any Junior Securities (other than a dividend or distribution paid in shares of, or warrants, rights or options exercisable for or convertible into, any Junior Securities), nor shall any Junior Securities be redeemed, purchased or otherwise retired for any consideration, nor may any moneys be paid to or made available for a sinking fund for the redemption of any shares of

any such securities, by the Corporation (other than redemptions and purchases pursuant to or in accordance with employee stock subscription agreements entered into between the Corporation and certain of its or its

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subsidiaries' directors, officers and key employees), except by conversion into or exchange for Junior Securities. Holders of the shares of the Series B Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full cumulative dividends as provided in paragraph 3(i).

(iii) Subject to the foregoing provisions of this paragraph (3), the Board of Directors may declare and the Corporation may pay or set apart for payment dividends and other distributions on any of the Junior Securities or Parity Securities, and may redeem, purchase, or otherwise retire any Junior Securities, and the holders of the shares of the Series B Preferred Stock shall not be entitled to share therein.

(iv) Any dividend payment made on shares of the Series B Preferred Stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of the Series B Preferred Stock.

(v) All dividends paid with respect to shares of the Series B Preferred Stock pursuant to this paragraph (3) shall be paid pro rata to the holders entitled thereto.

(vi) Holders of shares of the Series B Preferred Stock shall be entitled to receive the dividends provided for in this paragraph (3) in preference to and in priority over any dividends upon any of the Junior Securities.

(4) Redemption. (i) The shares of the Series B Preferred Stock shall not be redeemable prior to August 18, 1998. On and after August 18, 1998, the Corporation, at its option, may redeem shares of the Series B Preferred Stock, as a whole or in part, at any time or from time to time, at a redemption price per share of \$25,000, plus, in each case, an amount equal to accrued and unpaid dividends thereon to the date fixed for redemption, without interest, to the extent the Corporation shall have funds legally available for such payment.

(ii) So long as any shares of the Series B Preferred Stock are outstanding, any repurchase, redemption or other retirement of any Parity Securities or any warrants, rights or options exercisable for or convertible into any of the Parity Securities (other than the repurchase, redemption or other retirement of debentures or other debt securities that

are convertible or exchangeable into any Parity Securities) must be made on a pro rata basis with the Series B Preferred Stock so that the total redemption prices of the shares redeemed of Series B Preferred Stock and such Parity Securities shall in all cases bear to each other the same ratio that the total redemption prices of all shares outstanding on the applicable date of Series B Preferred Stock and such Parity Securities bear to each other, unless prior to or concurrently with such repurchase, redemption or other retirement, as the case may be, all accrued and unpaid

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dividends on shares of the Series B Preferred Stock not paid on the dates provided for in paragraph (3)(i) hereof (including accrued dividends not paid by reason of the terms and conditions of paragraph (3)(i) or paragraph (3)(ii) hereof) shall have been or be paid.

(iii) The holders of shares of Series B Preferred Stock at the close of business on a Dividend Payment Record Date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the call for redemption thereof (except that holders of shares called for redemption on a date occurring between such Record Date and the Dividend Payment Date shall not be entitled to receive such dividend on such Dividend Payment Date) or the Corporation's default in payment of the dividend due on such Dividend Payment Date.

(iv) Shares of Series B Preferred Stock that have been issued and reacquired in any manner, including shares purchased or redeemed, shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of the class of Preferred Stock undesignated as to series and may be redesignated and reissued as part of any series of the Preferred Stock.

(5) Procedure for Redemption. (i) In the event that fewer than all the outstanding shares of Series B Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be selected pro rata (as nearly as may be practicable without creating fractional shares) or by any other means determined by the Board of Directors in its sole discretion to be equitable, except the Corporation may redeem all shares held by any holders of a number of shares not to exceed 100, including all shares held by holders who, after giving effect to such redemption, would hold less than 100 shares, as may be specified by the Corporation.

(ii) In the event the Corporation shall redeem shares of Series B Preferred Stock, written notice of such redemption shall be given by first class mail, postage prepaid, mailed not less than 30 days nor more than 60

days prior to the redemption date, to each holder of record of the shares to be redeemed at such holder's address as the same appears on the stock register of the Corporation; provided, however, that no failure to give such notice nor any defect therein shall affect the validity of the proceeding for the redemption of any shares of Series B Preferred Stock to be redeemed except as to the holder to whom the Corporation has failed to mail said notice or except as to the holder whose notice was defective. Each such notice shall state: (a) the redemption date; (b) the number of shares of Series B Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed from such holder, the number of shares to be redeemed from such holder; (c) the

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redemption price including an amount equal to any accrued and unpaid dividends to the redemption date; (d) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; and (e) that dividends on the shares to be redeemed will cease to accrue on such redemption date (unless the Corporation shall default in providing funds for the payment of the redemption price of the shares called for redemption at the time and place specified in such notice).

(iii) Notice having been mailed as aforesaid, from and after the redemption date (unless default shall be made by the Corporation in providing funds for the payment of the redemption price of the shares called for redemption), notwithstanding that the certificates evidencing any shares of Series B Preferred Stock so called for redemption shall not have been surrendered, dividends on the shares of Series B Preferred Stock so called for redemption shall cease to accrue and shall be redeemed and, upon the taking of any action required by applicable law, said shares shall no longer be deemed to be outstanding and shall have the status of authorized but unissued shares of Preferred Stock, undesignated as to series, and all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the redemption price and any accrued and unpaid dividends) shall cease. Upon surrender in accordance with said notice of the certificates for any shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the redemption price aforesaid plus an amount equal to any accrued and unpaid dividends, without interest. In case fewer than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

(iv) The Corporation's obligation to provide funds for the

payment of the redemption price (including an amount equal to any accrued and unpaid dividends to the redemption date) of the shares called for redemption shall be deemed fulfilled if, on or before a redemption date, the Corporation shall deposit, with a bank or trust company, or an affiliate of a bank or trust company, having an office or agency in New York City and having a capital and surplus of at least \$50,000,000, such funds sufficient to pay the redemption price (including an amount equal to any accrued and unpaid dividends to the redemption date) of the shares called for redemption, in trust for the account of the holders of the shares to be redeemed (and so as to be and continue to be available therefor), with irrevocable instructions and authority to such bank or trust company that such funds be delivered upon redemption of the shares of Series B Preferred Stock so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of two years from such redemption date shall be repaid and released to the

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Corporation, after which the holder or holders of such shares of Series B Preferred Stock so called for redemption shall look only to the Corporation for delivery of such funds.

(6) Liquidation Preference. (i) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after payment or provision for payment of any Senior Securities, an amount per share of Series B Preferred Stock in cash equal to the sum of \$25,000 plus an amount equal to all accrued and unpaid dividends thereon to the date of liquidation, dissolution or winding up, before any payment shall be made or any assets distributed to the holders of any of the Junior Securities in connection with such liquidation, dissolution or winding up. If the assets of the Corporation are not sufficient to pay in full the liquidation payments payable to the holders of outstanding shares of the Series B Preferred Stock and any Parity Securities, then the holders of all such shares shall share ratably in such distribution of assets in accordance with the amount which would be payable on such distribution if the amounts to which the holders of outstanding shares of Series B Preferred Stock and the holders of outstanding shares of such Parity Securities are entitled were paid in full. Except as provided in this paragraph (6)(i), holders of Series B Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution or winding up of the affairs of the Corporation.

(ii) For the purposes of this paragraph (6), neither the

voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation nor the consolidation or merger of the Corporation with or into one or more other corporations nor the consolidation or merger of one or more corporations with or into the Corporation shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up.

(7) Voting Rights. (i) The holders of record of shares of Series B Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this paragraph (7) or as otherwise provided by law.

(ii) (a) If at any time or times dividends payable on all series of Preferred Stock, including the Series B Preferred Stock, shall be in arrears and unpaid for the six quarterly periods, then the number of directors constituting the Board of Directors, without further action, shall be increased by two (2) and the holders of shares of Series B Preferred Stock shall have the right, together with the holders of all other outstanding series of the Preferred Stock entitled to vote thereon (other than the Cumulative Convertible Preferred Stock), to elect the

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directors of the Corporation to fill such newly created directorships, the remaining directors to be elected by the other class or classes of stock entitled to vote therefor, at each meeting of stockholders held for the purpose of electing directors; provided, that in no event shall such holders have the right to elect more than 25% of the total number of directors of the Corporation; provided, further, that, notwithstanding the foregoing proviso, such holders shall have the right to elect not less than one director pursuant to this paragraph (7) (ii) (a).

(b) Whenever such voting right shall have vested, such right may be exercised initially either at a special meeting of the holders of shares of Series B Preferred Stock together with the holders of all other outstanding series of the Preferred Stock entitled to vote thereon (other than the Cumulative Convertible Preferred Stock), called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at such meetings or by the written consent of such holders pursuant to Section 228 of the General Corporation Law of the State of Delaware. Such voting right shall continue until such time as all cumulative dividends accumulated on all outstanding series of Preferred Stock shall have been paid in full or declared and set aside for payment in full, at which time such voting right of such holders shall terminate, subject to re-vesting in the event of each and every

subsequent failure of the Corporation to pay dividends for the requisite number of quarters as described above.

(c) At any time when such voting right shall have vested in the holders of shares of Series B Preferred Stock together with all other series of Preferred Stock entitled to vote thereon (other than the Cumulative Convertible Preferred Stock) and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of 10% of the holders of record of shares of such series of Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of holders of shares of such series of Preferred Stock. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by the proper officers of the Corporation within 30 days after the personal service of such written request upon the Secretary of the Corporation, or within 30 days after mailing the same within the United States, by registered mail, addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of 10% of the shares of such series of Preferred Stock then outstanding may designate in writing a holder of shares of such series of Preferred Stock to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required

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for annual meetings of stockholders and shall be held at the same place as is elsewhere provided in this paragraph (7)(ii)(c). Any holder of shares of such series of Preferred Stock that would be entitled to vote at such meeting shall have access to the stock books of the Corporation for such series of Preferred Stock for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this paragraph. Notwithstanding the provisions of this paragraph, however, no such special meeting shall be called during a period within 90 days immediately preceding the date fixed for the next annual meeting of stockholders.

(d) At any meeting held for the purpose of electing directors at which the holders of shares of Series B Preferred Stock together with all other series of Preferred Stock entitled to vote thereon (other than the Cumulative Convertible Preferred Stock) shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of at least a majority of the then outstanding shares of such series of Preferred Stock shall be required and be sufficient to

constitute a quorum of such series for the election of directors by such series. At any such meeting or adjournment thereof (x) the absence of a quorum of the holders of shares of such series of Preferred Stock shall not prevent the election of directors other than those to be elected by the holders of stock of such series of Preferred Stock and the absence of a quorum or quorums of the holders of capital stock entitled to elect such other directors shall not prevent the election of directors to be elected by the holders of shares of such series of Preferred Stock and (y) in the absence of a quorum of the holders of shares of such series of Preferred Stock, a majority of such holders present in person or by proxy shall have the power to adjourn the meeting for the election of directors which the holders of shares of such series of Preferred Stock may be entitled to elect, from time to time, without notice (except as required by law) other than announcement at the meeting, until a quorum shall be present.

(e) The term of office of all directors elected by the holders of shares of Series B Preferred Stock together with all other series of Preferred Stock entitled to vote thereon (other than Cumulative Convertible Preferred Stock) pursuant to paragraph (7)(ii)(a) in office at any time when the aforesaid voting rights are vested in the holders of shares of such series of Preferred Stock shall terminate upon the election of their successors at any meeting of stockholders for the purpose of electing directors. Upon any termination of the aforesaid voting rights in accordance with paragraph (7)(ii)(b), the term of office of all directors elected by the holders of shares of such series of Preferred Stock pursuant to paragraph (7)(ii)(a) then in office shall thereupon terminate and upon such termination the number of directors constituting the Board of Directors shall, without further action, be reduced by two (2) (or such other lesser number by which the number of directors constituting the

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Board of Directors shall have been increased pursuant to paragraph (7)(ii)(a) hereof), subject always to the increase of the number of directors pursuant to paragraph (7)(ii)(a) in case of the future right of the holders of shares of such series of Preferred Stock to elect directors as provided herein.

(f) In case of any vacancy occurring among the directors elected pursuant to paragraph (7)(ii)(a), the remaining director who shall have been so elected may appoint a successor to hold office for the unexpired term of the director whose place shall be vacant. If all directors so elected by the holders of shares of Series B Preferred Stock together with all other series of Preferred Stock entitled to vote thereon (other than Cumulative Convertible Preferred Stock) shall cease to serve as directors before their terms shall expire, the holders of shares of such

series of Preferred Stock then outstanding may, at a special meeting of the holders called as provided above, elect successors to hold office for the unexpired terms of the directors whose places shall be vacant.

(iii) So long as any shares of the Series B Preferred Stock are outstanding (except when notice of the redemption of all outstanding shares of Series B Preferred Stock has been given pursuant to paragraphs (5) and (6) and funds have been deposited in trust for such redemption), the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of Series B Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, authorize any new class of Parity Securities.

(iv) So long as any shares of the Series B Preferred Stock are outstanding (except when notice of the redemption of all outstanding shares of Series B Preferred Stock has been given pursuant to paragraphs (5) and (6) and funds have been deposited in trust for such redemption), the Corporation shall not, without the affirmative vote or consent of the holders of at least 66-2/3% of the shares of Series B Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, authorize any new class of Senior Securities or designate a new series of Senior Securities from an existing class of Preferred Stock.

(v) So long as any shares of the Series B Preferred Stock are outstanding (except when notice of the redemption of all outstanding shares of Series B Preferred Stock has been given pursuant to paragraphs (5) and (6) and funds have been deposited in trust for such redemption), the Corporation shall not, without

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the affirmative vote or consent of the holders of at least 66-2/3% of the shares of Series B Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, amend the Certificate of Incorporation or this Certificate of Designation so as to affect materially and adversely the specified rights, preferences, privileges or voting power of holders of shares of Series B Preferred Stock.

(vi) Except as set forth in paragraph (7)(iii) and paragraph (7)(iv) above, the creation, authorization or issuance of any shares of any Junior Securities, Parity Securities or Senior Securities, the creation of any indebtedness of any kind of the Corporation, or the increase or decrease in the amount of authorized capital stock of any class, including Preferred Stock, shall not require the consent of the holders of Series B Preferred Stock and shall not be deemed to affect materially and adversely the rights, preferences, privileges or voting power of holders of shares of Series B Preferred Stock.

(vii) When voting together as one class with the holders of any other series of Preferred Stock, the holders of Series B Preferred Stock shall be entitled to 1,000 votes per share.

(8) Increase in Shares. The number of shares of Series B Preferred Stock may, to the extent of the Corporation's authorized and unissued Preferred Stock, be increased by further resolution duly adopted by the Board of Directors and the filing of a certificate of increase with the Secretary of State of the State of Delaware.

(9) Limitations. Except as may otherwise be required by law, the shares of Series B Preferred Stock shall not have any powers, preferences or relative, participating, optional or other special rights other than those specifically set forth in this resolution (as such resolution may be amended from time to time) or otherwise in the Certificate of Incorporation of the Corporation.

The following is a statement of the number, designation, powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the Series C Conversion Preferred Stock of the Corporation:

(1) Designation. The designation of the series of Preferred Stock authorized by this resolution shall be "Series C Conversion Preferred Stock" (the "Series C Preferred Stock") consisting of 26,675,000 shares.

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(2) Rank. The Series C Preferred Stock shall, with respect to dividend rights and rights upon liquidation, dissolution and winding up, rank prior to the Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation and on a parity with the Series B Cumulative Preferred Stock, par value \$0.01 per share (the "Series B Cumulative Preferred Stock"), and the ESOP Convertible Preferred Stock, par value \$0.01 per share and stated value \$16.00 per share (the "ESOP Convertible

Preferred Stock"), of the Corporation. All equity securities of the Corporation to which the Series C Preferred Stock ranks prior, including the Common Stock, are collectively referred to herein as the "Junior Securities," all equity securities of the Corporation with which the Series C Preferred Stock ranks on a parity, including the Series B Cumulative Preferred Stock and the ESOP Convertible Preferred Stock, are collectively referred to herein as the "Parity Securities" and all equity securities of the Corporation (other than convertible debt securities) to which the Series C Preferred Stock ranks junior, whether with respect to dividends or upon liquidation, dissolution, winding-up or otherwise, are collectively referred to herein as the "Senior Securities." The Series C Preferred Stock shall be subject to the creation of Junior Securities, Parity Securities and Senior Securities.

(3) Dividends. (a) The holders of outstanding shares of the Series C Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of funds legally available for the payment of dividends, cumulative preferential cash dividends accruing at the per share rate of \$1.503 per quarter and no more, payable in arrears on each February 15, May 15, August 15 and November 15, respectively (each such date being hereinafter referred to as a "Dividend Payment Date"), commencing on August 15, 1994. If any Dividend Payment Date shall be or be declared a national or New York State holiday or if banking institutions in the State of New York shall be closed because of a banking moratorium or otherwise on such date, then such dividends shall be paid on the next succeeding day on which such banks shall be open. Each such dividend will be payable to holders of record as they appear on the stock books of the Corporation on such record dates, not less than 10 nor more than 50 days preceding the payment dates thereof, as shall be fixed by the Board of Directors. Dividends on the Series C Preferred Stock shall accrue (whether or not declared) on a daily basis from the previous Dividend Payment Date, except that the first dividend shall accrue from the date of issuance of the Series C Preferred Stock. Accrued and unpaid dividends shall not bear interest. Dividends will cease to accrue in respect of the Series C Preferred Stock on the Mandatory Conversion Date (as defined in paragraph (4)(a)) or on the date of their earlier redemption or conversion, unless the Corporation shall default in delivering the shares of Common Stock or other kind of security or other property and cash, if any, payable by the Corporation upon such redemption or conversion pursuant to paragraph (4). Dividends (or cash amounts equal to accrued and unpaid dividends)

payable on the Series C Preferred Stock for any period shorter than a quarterly dividend period shall be computed on the basis of a 360-day year of twelve 30-day months.

(b) No full dividends shall be declared by the Board of Directors or paid or set apart for payment by the Corporation on any Parity Securities for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum set apart sufficient for such payment on the Series C Preferred Stock through the most recent Dividend Payment Date. If any dividends are not paid or set apart in full, as aforesaid, upon the shares of the Series C Preferred Stock and any Parity Securities, all dividends declared upon the Series C Preferred Stock and any Parity Securities shall be declared pro rata so that the amount of dividends declared per share on the Series C Preferred Stock and such Parity Securities shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Stock and such Parity Securities bear to each other. Unless full cumulative dividends, if any, accrued on all outstanding shares of the Series C Preferred Stock have been or contemporaneously are declared and paid or declared and a sum set apart sufficient for such payment through the most recent Dividend Payment Date, no dividend shall be declared or paid or set aside for payment or other distribution declared or made upon the Common Stock or upon any other Junior Securities (other than a dividend or distribution paid in shares of, or warrants, rights or options exercisable for or convertible into, Common Stock or any other Junior Securities), nor shall any Common Stock nor any other Junior Securities be redeemed, purchased or otherwise acquired for any consideration, nor may any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such securities, by the Corporation (other than redemptions and purchases pursuant to or in accordance with employee stock subscription agreements entered into between the Corporation and its subsidiaries' directors, officers and key employees), except by conversion into or exchange for Junior Securities. Except as provided in paragraph 4(d), holders of the shares of the Series C Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of full cumulative dividends as provided in paragraph 3(a).

(c) Subject to the foregoing provisions of this paragraph (3) and paragraph (4) (d), the Board of Directors may declare and the Corporation may pay or set apart for payment dividends and other distributions on any of the Junior Securities or Parity Securities, and may redeem, purchase or otherwise acquire out of funds legally available therefor any Junior Securities, and the holders of the shares of the Series C Preferred Stock shall not be entitled to share therein.

(d) Any dividend payment made on shares of the Series C Preferred Stock shall first be credited against the earliest

accrued but unpaid dividend due with respect to shares of the Series C Preferred Stock.

(e) All dividends paid with respect to shares of the Series C Preferred Stock pursuant to this paragraph (3) shall be paid pro rata to the holders entitled thereto.

(f) Holders of shares of the Series C Preferred Stock shall be entitled to receive the dividends provided for in this paragraph (3) in preference to and in priority over any dividends upon any of the Junior Securities.

(4) Redemptions or Conversions. (a) Conversion on Mandatory

Conversion Date. Unless earlier called for redemption in accordance with

the provisions hereof, on May 15, 1997 (the "Mandatory Conversion Date"), each outstanding share of the Series C Preferred Stock shall convert into:

(i) subject to paragraph (4) (b) (vii) and (4) (d) (vi), shares of Common Stock at the Common Equivalent Rate (determined as provided in this paragraph (4)) in effect on the Mandatory Conversion Date; and

(ii) the right to receive an amount in cash equal to all accrued and unpaid dividends on such share of Series C Preferred Stock to and including the Mandatory Conversion Date, whether or not declared, out of funds legally available for the payment of dividends (and dividends shall cease to accrue on such share as of the Mandatory Conversion Date).

Subject to paragraphs 4(b) (i) (D), 4(b) (vii) and 4(d) (vi), the Corporation shall at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Common Stock or its issued Common Stock held in its treasury or both, for the purpose of effecting conversion of the Series C Preferred Stock pursuant to this paragraph 4(a), the full number of shares of Common Stock then deliverable upon such conversion of all outstanding shares of Series C Preferred Stock.

(b) Conversion Upon the Occurrence of Certain Events. (i) If

there shall occur a merger or consolidation of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) (other than a merger or consolidation of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) with or into a wholly owned subsidiary of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity)) that results in the conversion or exchange of Common Stock into, or the right to receive, other securities or other property (whether of the

Corporation or any other entity) ("Merger Consideration") (any such merger or consolidation is referred to herein as a "Merger or Consolidation"), then (subject

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to the following provisions of this paragraph (4) (b) and paragraph 4(c)), each outstanding share of the Series C Preferred Stock shall, at the option of the Corporation:

(A) (x) immediately prior to the Merger or Consolidation, convert into, subject to paragraphs (4) (b) (vii) and (4) (d) (vi), shares of Common Stock at the Common Equivalent Rate in effect immediately prior to such Merger or Consolidation; plus

(y) the right to receive an amount in cash equal to all accrued and unpaid dividends on such share of the Series C Preferred Stock to and including the Settlement Date (as defined in paragraph 4(i) (v)), whether or not declared, out of funds legally available therefor (and dividends shall cease to accrue on such share as of the Settlement Date); plus

(z) the right to receive an amount of cash initially equal to \$18.036, declining by \$.01656 on each day following the date of issuance of the Series C Preferred Stock (computed on the basis of a 360-day year of twelve 30-day months) to \$.996 on March 15, 1997, and equal to zero thereafter, in each case determined with reference to the Settlement Date, out of funds legally available therefor;

provided, that if the Call Price (as defined in paragraph (4) (i) (ii)) -----

on the Settlement Date is less than the sum of (I) the product of (1) the Current Market Price (as defined in paragraph (4) (d) (viii)) of a share of Common Stock on the Settlement Date (which Current Market Price shall be appropriately adjusted for the purposes of this proviso if the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Settlement Date) and (2) the number of shares of Common Stock issuable upon conversion of a share of Series C Preferred Stock pursuant to clause 4(b) (i) (A) (x) above, and (II) the amount of cash to be received with respect to an outstanding share of Series C Preferred Stock pursuant to clause 4(b) (i) (A) (z) above, then the number of shares of Common Stock issuable pursuant to clause 4(b) (i) (A) (x) above shall be reduced so that the sum referred to above in this proviso equals the Call Price on the Settlement Date, and provided, further, that the Corporation (or following the

application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) may, at its option, deliver on the Settlement Date, in lieu of some or all of the cash consideration described in clauses 4(b)(i)(A)(y) and (z) above, a number of shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)) to be determined by dividing the amount of cash consideration that the Corporation has elected to pay in Common Stock by the Current Market Price of the Common Stock determined as of

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the Settlement Date (which Current Market Price shall be appropriately adjusted, if necessary, for the purposes of this proviso if (I) the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Settlement Date or (II) the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) has distributed cash or other property pursuant to clause (2) of paragraph 4(d)(iii), shares or other units of securities or assets pursuant to clause (2) of paragraph 4(d)(iv) or shares of capital stock of the Spinoff Corporation (as defined in paragraph 4(d)(v)) pursuant to clause (2) of paragraph 4(d)(v)). Notwithstanding the foregoing terms of this paragraph 4(b)(i)(A), if there shall have occurred an adjustment pursuant to paragraph 4(d)(vi) as a result of a conversion or exchange or merger or consolidation referred to in such paragraph prior to the Settlement Date, then with respect to the exercise of any such option referred to in this paragraph 4(b)(i)(A) (including the exercise of the option referred to in the foregoing proviso by the Corporation (or its successor)), the Corporation shall deliver out of funds legally available therefor on such Settlement Date, in lieu of shares of Common Stock as described in this paragraph 4(b)(i)(A), the kind of securities or other property received by holders of Common Stock as a result of such conversion or exchange or merger or consolidation, in the same relative proportions (if more than one kind of securities or other property was so received) as exist in the Common Equivalent Rate on such Settlement Date, with an aggregate market price (determined for any security or other property, to the extent possible, in the manner that the Current Market Price is determined for the Common Stock, and otherwise determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive), as of such Settlement Date, equal to the amount of cash consideration that the Corporation has elected to pay in such securities or other property (the option set forth in this paragraph 4(b)(i)(A) being hereinafter referred to as the "Common Conversion Option"); or

(B) be converted into the right to receive (at the time such Merger Consideration is distributed to holders of shares of Common Stock) in such Merger or Consolidation (subject to provision being made therefor in an applicable agreement with respect to such Merger or Consolidation) in exchange for such share of Series C Preferred Stock one share or other unit of a security (whether debt or equity or any depositary receipt representing such a security) (the "Issuing Entity Preferred Stock") of the Issuing Entity (as defined in paragraph 4(b)(ii)) having terms substantially equivalent to the Series C Preferred Stock (except that upon call or conversion such Issuing Entity Preferred Stock shall

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convert into Issuing Entity Common Equity (as defined in paragraph 4(b)(ii)) (the option set forth in this paragraph 4(b)(i)(B) being hereinafter referred to as the "Issuing Entity Preferred Stock Conversion Option"); or

(C) be converted into the right to receive (at the time such Merger Consideration is distributed to holders of Common Stock) in such Merger or Consolidation (subject to provision being made therefor in an applicable agreement with respect to such Merger or Consolidation) in exchange for such share of Series C Preferred Stock one share of a new series of Preferred Stock of the Corporation (or depositary receipts representing such Preferred Stock) ("New Preferred Stock") having terms substantially equivalent to the Series C Preferred Stock, except that (A) upon call or conversion such New Preferred Stock shall be exchanged (either against the Corporation or the Issuing Entity as provided in the agreement with respect to such Merger or Consolidation) into Issuing Entity Common Equity, out of funds legally available therefor, and (B) such New Preferred Stock need not provide holders thereof with the right to vote on all matters submitted to a vote of holders of Common Stock as provided in paragraph 6(b) (the option set forth in this paragraph 4(b)(i)(C) being hereinafter referred to as the "Corporation Preferred Stock Conversion Option"); or

(D) remain outstanding after such Merger or Consolidation, but only if the agreement with respect to such Merger or Consolidation requires that following the effective time of the Merger or Consolidation (a) upon call or conversation of the Series C Preferred Stock, in lieu of the Corporation delivering, out of funds legally available therefor, shares of its Common Stock, the Issuing Entity shall be obligated to deliver, out of legally available funds, Issuing

Entity Common Equity directly to holders of the Series C Preferred Stock, (b) the Issuing Entity shall at all times reserve and keep available, free from preemptive rights, out of the aggregate of its authorized but unissued Issuing Entity Common Equity and its issued common equity held in its treasury, for the purpose of effecting any conversion of the Series C Preferred Stock, the full number of shares or other units of common equity deliverable upon any such call or conversion of all outstanding shares of Series C Preferred Stock, (c) the Issuing Entity shall have the right to call the Series C Preferred Stock and to cause the exchange of the Series C Preferred Stock for its Issuing Entity Common Equity upon such call and (d) the Corporation shall relinquish the right to call the Series C Preferred Stock and its obligations upon conversion of the Series C Preferred Stock. In such event, from and after such effective time, (x) holders of shares of Series C Preferred Stock will no longer have any right to receive any consideration from the Corporation upon call or conversion of the Series C Preferred Stock and (y)

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all references in this paragraph (4) and in paragraphs (6)(d), (e) and (f) to Common Stock shall thereafter mean Issuing Entity Common Equity and (z) the Corporation may, without a vote of the holders of Series C Preferred Stock, amend this Certificate of Designation to make any incidental and conforming modifications to reflect the provisions contained in this paragraph 4(b)(i)(D) (the option set forth in this paragraph 4(b)(i)(D) being hereinafter referred to as the "Existing Preferred Stock Option").

Whether the Issuing Entity Preferred Stock or the New Preferred Stock has terms substantially equivalent to the Series C Preferred Stock will be determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive; provided that if the

Corporation elects the Issuing Entity Preferred Stock Conversion Option and the Issuing Entity is not a corporation or other entity organized under the laws of the United States or any State thereof or the District of Columbia (a "non-U.S. entity"), the Issuing Entity Preferred Stock may be considered substantially equivalent to the Series C Preferred Stock notwithstanding that, among other things, (i) a holder of Issuing Entity Preferred Stock is not entitled to the dividends received deduction under Section 243 or Section 245 of the Internal Revenue Code of 1986, as amended (the "Code"), (ii) the tax treatment of a holder of Issuing Entity Preferred Stock differs from the tax treatment of a holder of Series C Preferred Stock, including by reason of a future change in U.S. law, (iii) the Issuing Entity Preferred Stock

does not provide voting rights to the holders thereof to the same extent as the Series C Preferred Stock, so long as the Issuing Entity Preferred Stock provides voting rights to the fullest extent permitted by the law applicable to such securities, (iv) the Issuing Entity Preferred Stock does not provide that any or all cash payments will be made in U.S. dollars so long as such payments may not be made in U.S. dollars under applicable law, provided that the amount of currency other than U.S. dollars (the "Foreign

Currency") payable on any given date is adjusted (by reference to the noon U.S. dollar buying rate for the Foreign Currency for cable transfers quoted in the City of New York on the business day next preceding such payment, as certified for customs purposes by the Federal Reserve Bank of New York) to equal the number of U.S. dollars which would have been payable on such date if payment had been permitted to be made in U.S. dollars, (v) the Issuing Entity is prohibited by its certificate of incorporation or by-laws (or equivalent constituent documents) or by the laws of the jurisdiction of its establishment from issuing Issuing Entity Preferred Stock that automatically converts into Issuing Entity Common Equity (or, upon the distribution of the capital stock of the Spinoff Corporation (as defined in paragraph 4(d)(v)), into Spinoff Corporation Preferred Stock (as defined in paragraph 4(d)(v)), so long as the terms of such Issuing Entity Preferred Stock (or other agreements relating thereto) provide for conversion into Issuing Entity Common Equity (or, upon the distribution of the capital stock of the Spinoff Corporation,

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into Spinoff Corporation Preferred Stock) not later than the same date as such automatic conversion would have occurred and in a manner which gives a holder thereof substantially the same rights as if such Issuing Entity Preferred Stock had automatically converted or (vi) the Issuing Entity is prohibited by its certificate of incorporation or by-laws (or equivalent constituent documents) or by the laws of the jurisdiction of its establishment from issuing such Issuing Entity Preferred Stock with a liquidation preference subject to adjustment as set forth in paragraph 5 hereof. The Corporation will not elect the Issuing Entity Preferred Stock Conversion Option if the Issuing Entity is a non-U.S. entity, unless provision is made in the Issuing Entity Preferred Stock to gross up the amount paid to U.S. persons (as defined in paragraph 4(i)(ix)) in respect of any then existing or future tax, assessment or governmental charge imposed by the laws of the jurisdiction in which the Issuing Entity is established or organized or any political subdivision or taxing authority thereof or therein with respect to, and withheld on the making of, such payment; provided, however, that no gross up shall be required (a) if such

holder is liable for such tax, assessment or governmental charge in respect

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Series C Preferred Stock by reason of such holder's having some connection with the jurisdiction in which the Issuing Entity is established or organized other than being a holder of such Series C Preferred Stock or (b) if the Corporation has notified such holder of the obligation to withhold taxes and requested but not received from such holder the appropriate documentation or certification in support of any claim for exemption and such withholding or deduction would not have been required had such documentation or certification been received.

The Corporation's right to elect the Corporation Preferred Stock Conversion Option and the Existing Preferred Stock Option is subject to the conditions that (1) the Corporation shall survive as a subsidiary of the Issuing Entity and (2) the Issuing Entity shall have common equity which is publicly traded immediately after the effectiveness of the Merger or Consolidation (provided that the Issuing Entity Common Equity need not be -----
publicly traded in the United States).

(ii) Notwithstanding the Corporation's election of the Issuing Entity Preferred Stock Conversion Option, the Corporation Preferred Stock Conversion Option or the Existing Preferred Stock Option, if the Merger Consideration (excluding consideration in connection with fractional shares or the exercise of appraisal rights) consists of both common equity (or any depository receipts representing such common equity) of the entity issuing such Merger Consideration (which could be a U.S. or non-U.S. entity) (the "Issuing Entity") in the Merger or Consolidation ("Issuing Entity Common Equity") and property which is not Issuing Entity Common Equity ("Non-Common Equity Merger Consideration"), then, in addition to having the rights arising out of the Corporation's election of one of the foregoing Options, such holder shall be entitled to receive, at the time

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such Merger Consideration is distributed to holders of Common Stock, an amount of Non-Common Equity Merger Consideration equal to the amount of Non-Common Equity Merger Consideration that such holder would have been entitled to receive in the Merger or Consolidation had (A) such holder's Series C Preferred Stock been converted into shares of Common Stock at the Common Equivalent Rate in effect immediately prior to the Merger or Consolidation and (B) such shares of Common Stock been exchanged in the Merger or Consolidation for the amount of Merger Consideration which would have given a holder the maximum possible number of shares of Issuing Entity Common Equity pursuant to the agreement applicable to such Merger or Consolidation with respect to a share of Common Stock; provided that if the -----

Call Price on the Settlement Date is less than the fair value of such Non-Common Equity Merger Consideration per share of Series C Preferred Stock (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) as of the Settlement Date (the "Non-Common Equity Fair Value"), then the amount of Non-Common Equity Merger Consideration that a holder of Series C Preferred Stock shall be entitled to receive with respect to each share of Series C Preferred Stock will be reduced so that the Non-Common Equity Fair Value thereof equals the Call Price on the Settlement Date. If the Merger Consideration consists solely of Non-Common Equity Merger Consideration, the Corporation must elect the Common Conversion Option.

(iii) If the Corporation elects the Issuing Entity Preferred Stock Conversion Option or the Corporation Preferred Stock Conversion Option, the initial common equivalent rate on the Issuing Entity Preferred Stock or the New Preferred Stock, as the case may be, shall be equal to the Common Equivalent Rate on the Series C Preferred Stock in effect immediately prior to the Merger or Consolidation adjusted to reflect the ratio by which one share of Common Stock is exchanged for shares of Issuing Entity Common Equity in the Merger or Consolidation, and if the Corporation elects the Existing Preferred Stock Option, the Common Equivalent Rate on the Series C Preferred Stock immediately following the Merger or Consolidation shall be equal to the Common Equivalent Rate on the Series C Preferred Stock in effect immediately prior to the Merger or Consolidation adjusted to reflect the ratio by which one share of Common Stock is exchanged for shares of Issuing Entity Common Equity in the Merger or Consolidation.

(iv) If the Corporation fails to make the election set forth in paragraph 4(b)(i) prior to the date of effectiveness of the Merger or Consolidation, then the Corporation shall be deemed to have elected the Common Conversion Option.

(v) Notwithstanding the foregoing provisions of this paragraph 4(b), if the Corporation elects any of the options set forth in paragraph 4(b)(i)(B), (C) or (D) each holder of a share of Series C Preferred Stock will have the right (the "Holder Opt-Out Right") to elect that, in lieu of such holder's shares of

Series C Preferred Stock being subject to the Issuing Entity Preferred Stock Conversion Option, the Corporation Preferred Stock Conversion Option or the Existing Preferred Stock Option, as the case may be, each share of Series C Preferred Stock held by such holder will convert, in whole (but not in part), immediately prior to the effectiveness of the Merger or

Consolidation into (A) subject to paragraphs (4) (b) (vii) and (4) (d) (vi), shares of Common Stock at the Common Equivalent Rate in effect immediately prior to such Merger or Consolidation (provided that if the Call Price on

the Settlement Date is less than the product of (x) the Current Market Price of a share of Common Stock on the Settlement Date (which Current Market Price

shall be appropriately adjusted for the purposes of this proviso if the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Settlement Date) and (y) the number of shares of Common Stock issuable upon conversion

of a share of Series C Preferred Stock pursuant to the Holder Opt-Out Right, then the number of shares of Common Stock issuable pursuant to the Holder Opt-Out Right shall be reduced so that product referred to above equals the Call Price on the Settlement Date), plus (B) the right to receive an amount in cash equal to all accrued and unpaid dividends on the Series C Preferred Stock to and including the Settlement Date, whether or not declared, out of funds legally available for the payment of dividends (and dividends shall cease to accrue on such share as of the Settlement Date); provided that the Corporation (or following the application of the

terms of paragraph 4(b) (i) (D), the Issuing Entity) may, at its option, deliver on the Settlement Date, in lieu of some or all of the cash consideration described in clause (B), a number of shares of Common Stock (subject to paragraphs 4(b) (vii) and 4(d) (vi)) to be determined by dividing the amount of cash consideration that the Corporation has elected to pay in Common Stock by the Current Market Price of the Common Stock determined as of the Settlement Date (which Current Market Price shall be appropriately adjusted, if necessary, for the purposes of this proviso if (x) the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Settlement Date or (y) the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) has distributed cash or other property pursuant to clause (2) of paragraph 4(d) (iii) or shares or other units of securities or assets pursuant to clause (2) of paragraph 4(d) (iv) or shares of capital stock of the Spinoff Corporation pursuant to clause (2) of paragraph 4(d) (v)). Notwithstanding the foregoing terms of this paragraph 4(b) (v), if there shall have occurred an adjustment pursuant to paragraph 4(d) (vi) as a result of a conversion or exchange or merger or consolidation referred to in such paragraph prior to the Settlement Date, then with respect to the exercise of any such option referred to in this paragraph 4(b) (v) (including the exercise of the option referred to in the foregoing proviso by the Corporation (or its successor)), the Corporation shall deliver out of funds legally available therefor

on such Settlement Date, in lieu of shares of Common Stock as described in this paragraph 4(b)(v), the kind of securities or other property received by holders of Common Stock as a result of such conversion or exchange or merger or consolidation, in the same relative proportions (if more than one kind of securities or other property was so received) as exist in the Common Equivalent Rate on such Settlement Date, with an aggregate market price (determined for any security or other property, to the extent possible, in the manner that the Current Market Price is determined for the Common Stock, and otherwise determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive), as of such Settlement Date, equal to the amount of cash consideration that the Corporation has elected to pay in such securities or other property.

(vi) In order to exercise the Holder Opt-Out Right, a holder of Series C Preferred Stock shall (a) deliver a properly completed and duly executed written notice of election to convert, specifying the name or names in which such holder wishes the certificate or certificates for shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)) to be issued to the Corporation at its principal office or at the office of the agency which may be maintained for such purpose (the "Conversion Agent") at least one business day prior to the effectiveness of the Merger or Consolidation, (b) surrender the certificate for such shares of Series C Preferred Stock to the Corporation or the Conversion Agent, accompanied, if so required by the Corporation or the Conversion Agent, by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation or the Conversion Agent duly executed by the holder or his attorney duly authorized in writing, and (c) pay any transfer or similar tax required by paragraph 4(n). Conversion shall be deemed to have been effected immediately prior to the effective time of the Merger or Consolidation. Immediately upon conversion, the rights of the holders of converted shares of Series C Preferred Stock shall cease and the persons entitled to receive the shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)) upon the conversion of such shares of Series C Preferred Stock shall be treated for all purposes as having become the beneficial owners of such shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)).

(vii) If there shall occur a Merger or Consolidation of the Corporation and the Corporation elects the Existing Preferred Stock Option, then (A) the Series C Preferred Stock will, from and after the effective time of the Merger or Consolidation, no longer be subject to conversion into shares of Common Stock pursuant to paragraphs (4)(a), (4)(b), 4(c) and 4(e), but instead will be subject to conversion out of funds legally available therefor into the Issuing Entity Common Equity and (B) in such event, from and after the effective time of the Merger or Consolidation, the number of such shares of Issuing Entity Common Equity so issuable upon conversion of the shares of Series C Preferred Stock shall be subject to adjustment from time

to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of Common Stock contained in paragraphs 4(b)(iii) and (4)(d).

(c) Right to Call for Redemption. At any time and from time to

time prior to the Mandatory Conversion Date, the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall have the right to call, in whole or in part, the outstanding shares of the Series C Preferred Stock for redemption (subject to the notice provisions set forth in paragraph (4)(j)). Upon the redemption date, the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall deliver to the holders thereof in exchange for each such share called for redemption, (i) a number of shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)) equal to the Call Price in effect on the redemption date divided by the Current Market Price of the Common Stock determined as of the second Trading Date (as defined in paragraph 4(i)(vi)) immediately preceding the Notice Date (as defined in paragraph 4(i)(iv)) and (ii) an amount in cash equal to all accrued and unpaid dividends on such share of Series C Preferred Stock to and including the redemption date (and dividends shall cease to accrue on such share as of such date), whether or not declared, out of funds legally available therefor; provided that if there shall have occurred an adjustment pursuant to paragraph (4)(d)(vi) as a result of a conversion or exchange or merger or consolidation referred to in such paragraph prior to the redemption date, the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall deliver out of funds legally available therefor on the redemption date to the holders of shares of Series C Preferred Stock in exchange for each share thereof called for redemption, in lieu of shares of Common Stock as described in this paragraph (4)(c), the kind of securities or other property received by holders of Common Stock as a result of such conversion or exchange or merger or consolidation, in the same relative proportions (if more than one kind of securities or other property was so received) as exist in the Common Equivalent Rate on the redemption date, with an aggregate market price (determined for any security or other property, to the extent possible, in the manner that the Current Market Price is determined for the Common Stock, and otherwise determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive), as of the second Trading Date immediately preceding the Notice Date, equal to the Call Price in effect on the redemption date. If fewer than all the outstanding shares of Series C Preferred Stock are to be called for redemption, shares to be redeemed shall be selected by the

Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) from outstanding shares of Series C Preferred Stock not previously redeemed by lot or pro rata (as nearly as may be practicable without creating fractional shares) or by any other method determined by the Board of

Directors of the Corporation in its sole discretion to be equitable.

(d) Common Equivalent Rate; Adjustments. The Common Equivalent

Rate to be used to determine the number of shares of Common Stock to be delivered on the conversion of the Series C Preferred Stock into shares of Common Stock pursuant to paragraph (4) (a) or (b) shall be initially ten shares of Common Stock for each share of Series C Preferred Stock; provided, however, that such Common Equivalent Rate shall be subject to

adjustment from time to time as provided in paragraph 4(b) (iii) and in this paragraph (4) (d). All adjustments to the Common Equivalent Rate shall be calculated to the nearest 1/100th of a share of Common Stock. Such rate in effect at any time is herein called the "Common Equivalent Rate."

(i) If the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) shall either:

(A) pay a dividend or make a distribution with respect to Common Stock in shares of Common Stock,

(B) subdivide or split its outstanding shares of Common Stock into a greater number of shares,

(C) combine its outstanding shares of Common Stock into a smaller number of shares, or

(D) issue by reclassification of its shares of Common Stock any shares of common stock of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity),

then, in any such event, the Common Equivalent Rate in effect immediately prior thereto shall be adjusted so that the holder of a share of the Series C Preferred Stock shall be entitled to receive on the conversion of such share of the Series C Preferred Stock, the number of shares of common stock of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) which such holder would have owned or been entitled to receive after the happening of any of the events described

above had such share of the Series C Preferred Stock been converted at the Common Equivalent Rate in effect immediately prior to such event or any record date with respect thereto. Such adjustment shall become effective as of the close of business on the record date for determination of stockholders entitled to receive such dividend or distribution in the case of a dividend or distribution, and shall become effective immediately after the effective date in case of a

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subdivision, split, combination or reclassification; and any shares of Common Stock issuable in payment of a dividend shall be deemed to have been issued immediately prior to the close of business on the record date for such dividend for purposes of calculating the number of outstanding shares of Common Stock under clauses (ii), (iii), (iv) and (v) below. Such adjustment shall be made successively.

(ii) If the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall, after the date hereof, issue rights or warrants to all holders of its Common Stock entitling them (for a period not exceeding 45 days from the date of such issuance) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price of the Common Stock (determined pursuant to paragraph (4)(d)(viii)) on the record date for the determination of stockholders entitled to receive such rights or warrants, then in each case the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect immediately prior to the date of issuance of such rights or warrants by a fraction, of which the numerator shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants, immediately prior to such issuance, plus the number of additional shares of Common Stock offered for subscription or purchase pursuant to such rights or warrants, and of which the denominator shall be the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants, immediately prior to such issuance, plus the number of shares of Common Stock which the aggregate offering price of the total number of shares of Common Stock so offered for subscription or purchase pursuant to such rights or warrants would purchase at such Current Market Price (determined by multiplying such total number of shares by the exercise price of such rights or warrants and dividing the product so obtained by such Current Market Price). Such adjustment shall become effective as of the close of business on the record date for the 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 Common Equivalent Rate shall be readjusted to the Common Equivalent Rate which would then be in effect had the adjustments made upon the issuance of such rights or

warrants been made upon the basis of delivery of only the number of shares of Common Stock actually delivered. Such adjustment shall be made successively.

(iii) If the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall distribute cash (other than any Permitted Quarterly Dividend (as defined in this paragraph 4(d)(iii)), any cash distributed in consideration of fractional shares of Common Stock, any cash distributed in accordance with paragraph 4(d)(iii)(2) or 4(d)(iv)(2) and any cash distributed in a Merger or Consolidation ("Excluded Distributions")), by dividend or otherwise, to all holders of its Common Stock or make an Excess Purchase Payment

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(as defined in this paragraph 4(d)(iii)) then, at the option of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity), the Corporation shall make the adjustment set forth in clause (1) below if such option is chosen by the Corporation (or the Issuing Entity) or shall make the distribution (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity shall make the distribution) set forth in clause (2) below if such option is chosen by the Corporation (or the Issuing Entity):

(1) if the option set forth in this clause (1) is chosen, the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect on the record date with respect to such distribution or the payment date with respect to such Excess Purchase Payments by a fraction, of which the numerator shall be the Current Market Price per share of the Common Stock (determined pursuant to paragraph 4(d)(viii)) on such record date or payment date and of which the denominator shall be such Current Market Price per share of Common Stock less the amount of such distribution applicable to one share of Common Stock which would not be a Permitted Quarterly Dividend (or in the case of an Excess Purchase Payment, less the aggregate amount of such Excess Purchase Payments divided by the number of outstanding shares of Common Stock on the relevant payment date) (provided that the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall not be permitted to elect the option described in this clause (1) if (a) the amount of such distribution applicable to one share of Common Stock which would not be a Permitted Quarterly Dividend (or in the case of an Excess Purchase Payment, the aggregate amount of such Excess Purchase Payments divided by the number of outstanding shares of Common Stock on the relevant payment date) is greater than or equal to 95% of such Current Market Price per share of Common Stock, in each case as of such record date or payment date, or (b) with respect to such cash distribution (other than an Excess Purchase Payment), the day on which

such record date is fixed by the Board of Directors of the Corporation is less than twenty-one consecutive Trading Days prior to such record date); or

(2) if the option set forth in this clause (2) is chosen, there shall be distributed, out of legally available funds, at the time such cash distribution or Excess Purchase Payment is made to the holders of its Common Stock, to the holders of Series C Preferred Stock (as of the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution (or in the case of an Excess Purchase Payment, as of the purchase date)) an amount of cash or other assets per share of Series C Preferred Stock as such holder would have been entitled to receive if such Series C Preferred Stock had been converted into shares

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of Common Stock (and in the case of an Excess Purchase Payment had participated on a pro rata basis (assuming the participation of all outstanding shares of Common Stock) in such tender offer or exchange offer) at the Common Equivalent Rate in effect immediately prior to the record date for such distribution or the payment date for such Excess Purchase Payment less, in the case of a cash distribution, the amount of such distribution which would have been a Permitted Quarterly Dividend.

The adjustment provided in clause (1) above shall become effective as of the close of business on the record date for the determination of stockholders entitled to receive such dividend or distribution or the payment date with respect to such Excess Purchase Payment. If the amount of cash or, in the case of an Excess Purchase Payment, the value of the assets (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) to be distributed in accordance with clause (2) above exceeds the Call Price as of such record date or payment date, the amount of cash or other assets to be distributed with respect to each share of Series C Preferred Stock shall be reduced so that the amount to be distributed equals the Call Price on such record date or payment date. As used in this paragraph 4(d)(iii), the term "Permitted Quarterly Dividend" means any quarterly cash dividend in respect of the Common Stock to the extent that the per share amount of such dividend does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock which did not at the record date therefor require an adjustment to the Common Equivalent Rate or a distribution in accordance with clause (2) above and (y) 15% of the Current Market Price per share of Common Stock, determined on the record date for such quarterly dividend, less the sum of the per share amounts

(appropriately adjusted to account for any of the events described in paragraph 4(d)(i)) of all quarterly dividends, if any, in respect of the Common Stock with a record date less than one year prior to the record date for such quarterly dividend. As used in this paragraph 4(d)(iii), the term "Excess Purchase Payment" means the excess, if any, of (A) the cash and the value (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) of all other consideration paid by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) with respect to one share of Common Stock acquired in a tender offer or exchange offer by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) over (B) the Current Market Price per share of Common Stock on the payment date for such Excess Purchase Payment.

(iv) If the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall pay a dividend or make a distribution to all holders of its Common Stock of evidence of its indebtedness, other securities or other assets (including shares of capital stock of the

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Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) (other than Common Stock) and shares of capital stock of any subsidiary of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) (other than as set forth in paragraph 4(d)(v)) but excluding any distributions and dividends referred to in paragraphs 4(d)(i) and (iii) above or any other cash dividends or distributions), or shall issue to all holders of its Common Stock rights or warrants to subscribe for or purchase any of its securities (other than those referred to in paragraph 4(d)(ii) above), then in each such case at the option of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity), the Corporation shall make the adjustment set forth in clause (1) below if such option is chosen by the Corporation (or the Issuing Entity) or shall make the distribution (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity shall make the distribution) set forth in clause (2) below if such option is chosen by the Corporation (or the Issuing Entity):

(1) if the option set forth in this clause (1) is chosen, the Common Equivalent Rate shall be adjusted by multiplying the Common Equivalent Rate in effect on the record date for the distribution of the securities or assets by a fraction, of which the numerator shall be the Current Market Price per share of the Common Stock (determined pursuant to paragraph (4)(d)(viii)) on the record date for the

determination of stockholders entitled to receive such dividend or distribution, and of which the denominator shall be such Current Market Price per share of Common Stock less the fair value (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) as of such record date of the portion of the securities or assets so distributed, or of such rights or warrants, applicable to one share of Common Stock (the "Distribution Fair Value") (provided that the Corporation (or

following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall not be permitted to elect the option described in this clause (1) if (a) such determination of fair value by the Board of Directors of the Corporation applicable to one share of Common Stock is greater than or equal to 95% of such Current Market Price per share of Common Stock, in each case as of such record date, or (b) the day on which such record date is fixed by the Board of Directors of the Corporation is less than twenty-one consecutive Trading Days prior to such record date; or

(2) if the option set forth in this clause (2) is chosen, there shall be distributed, out of funds legally available therefor, at the time such dividend, distribution or issuance is made to the holders of its Common Stock, to the holders of shares of Series C Preferred Stock (as of the record date for the determination of holders of Common Stock

entitled to receive such dividend, distribution or issuance) the kind and amount of such securities or assets of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) as such holder would have been entitled to receive if such shares of Series C Preferred Stock had been converted into shares of Common Stock at the Common Equivalent Rate in effect immediately prior to the record date for such dividend or distribution.

The adjustment provided in clause (1) shall become effective as of the close of business on the record date for the determination of stockholders entitled to receive such dividend or distribution. If the Distribution Fair Value of the shares or other units of securities or assets distributed with respect to each share of Series C Preferred Stock in accordance with clause (2) above would, as of the record date of such distribution, exceed the Call Price as of such record date, the amount of shares or other units of securities or assets to be distributed with respect to each share of Series C Preferred Stock shall be reduced so that the Distribution Fair Value thereof equals the Call Price on such record date.

(v) If the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall pay a dividend or makes a distribution to all holders of its Common Stock of shares of capital stock of any subsidiary of the Corporation (the "Spinoff Corporation"), which Spinoff Corporation represents all or substantially all of the Corporation's interest in either of the two principal lines of business of RJR Nabisco Holdings Corp. and its subsidiaries as of May 6, 1994, then, at the option of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity), the Corporation shall, out of legally available funds, effect the conversion set forth in clause (1) below if such option is chosen by the Corporation (or the Issuing Entity) or shall make the distribution (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity shall make the distribution) set forth in clause (2) below if such option is chosen by the Corporation (or the Issuing Entity):

(1) if the option set forth in this clause (1) is chosen, subject to the proviso set forth in clause (2) below, each share of Series C Preferred Stock will be converted into the right of the holder of such share of Series C Preferred Stock as of the Common Stock Record Date (as defined in this paragraph 4(d)(v)) to receive (at the time such capital stock is distributed to holders of Common Stock):

(a) one half of a share of a security (the "Spinoff Corporation Preferred Stock") of the Spinoff Corporation having terms substantially equivalent to the Series C Preferred Stock (except that (i) upon call

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or conversion such Spinoff Corporation Preferred Stock shall convert into common stock of Spinoff Corporation, (ii) the initial common equivalent rate per share of Spinoff Corporation Preferred Stock (as of the record date for the determination of holders of Common Stock entitled to receive such dividend or distribution (the "Common Stock Record Date")) shall equal a fraction, of which the numerator shall be the product of (A) the Current Market Price per share of the Common Stock (determined pursuant to paragraph 4(d)(viii)) on the Common Stock Record Date and (B) the Common Equivalent Rate on the Common Stock Record Date, and of which the denominator shall be the Spinoff Fair Value (as defined in this paragraph 4(d)(v)), (iii) all references to Common Stock shall mean the common stock of the Spinoff Corporation, (iv) all references to the Corporation (or following the application of

the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall mean the Spinoff Corporation, (v) any notice given to the holders of record of shares of Series C Preferred Stock on the Common Stock Record Date will be valid notice to the record holders of the Spinoff Corporation Preferred Stock for the purpose of giving notice required by the terms of the Spinoff Corporation Preferred Stock to such holders prior to the issuance thereof and (vi) the liquidation preference per share of Spinoff Corporation Preferred Stock shall be equal to the greater of (A) the liquidation preference per share of the Series C Preferred Stock prior to the date of conversion and (B) the fair market value per share of Spinoff Corporation Preferred Stock (as determined, on or within five business days after the date of issuance of the Spinoff Corporation Preferred Stock, by the board of directors of the Spinoff Corporation, whose determination shall be conclusive) as of the date of their issuance); and

(b) one half of a share of Series C Preferred Stock; provided that following such conversion in accordance with this paragraph 4(d)(v)(1)(b), (i) the Common Equivalent Rate per share of Series C Preferred Stock (as of the Common Stock Record Date) shall equal a fraction, of which the numerator shall be the product of (A) the Current Market Price per share of the Common Stock on the Common Stock Record Date and (B) the Common Equivalent Rate on the Common Stock Record Date, and of which the denominator shall be the excess of (x) the Current Market Price per share of the Common Stock on the Common Stock Record Date over (y) the Spinoff Fair Value and (ii) the liquidation preference per share of Series C Preferred Stock from and after the time of conversion shall be equal to the greater of (A) the liquidation preference per share of the Series C Preferred Stock prior to the date of conversion and (B) the fair market value per share of the Series C

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Preferred Stock (as determined, on or within five business days after the date of issuance of the Spinoff Corporation Preferred Stock, by the board of directors of the Corporation, whose determination shall be conclusive) as of the date of issuance of the Spinoff Corporation Preferred Stock; or

(2) if the option set forth in this clause (2) is chosen, there shall be distributed, at the time such dividend or distribution is made to the holders of its Common Stock, to the holders of shares of Series C Preferred Stock as of the Common Stock Record Date that number of shares of capital stock of the Spinoff Corporation as such

holder would have been entitled to receive if such shares of Series C Preferred Stock had been converted into shares of Common Stock at the Common Equivalent Rate in effect immediately prior to the record date for such dividend or distribution; provided that the Corporation (or

following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall elect the option described in this clause (2) if (a) the fair value (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) as of the Common Stock Record Date of the portion of the capital stock so distributed applicable to one share of Common Stock (assuming the conversion of the Series C Preferred Stock into Spinoff Corporation Preferred Stock) (the "Spinoff Fair Value") is greater than or equal to 95% of the Current Market Price per share of Common Stock as of the Common Stock Record Date, or (b) the day on which such record date is fixed by the Board of Directors of the Corporation is less than twenty-one consecutive Trading Days prior to such record date.

As of the Common Stock Record Date (or as of any date thereafter until the distribution of the Spinoff Corporation Preferred Stock), the holders of record of shares of Series C Preferred Stock will be considered the holders of record of any Spinoff Corporation Preferred Stock for purposes of the Certificate of Designation and for purposes of the certificate of designation with respect to the Spinoff Corporation Preferred Stock, including the giving of notice or voting thereunder.

If the Spinoff Fair Value of the shares of capital stock of the Spinoff Corporation distributed with respect to each share of Series C Preferred Stock pursuant to clause (2) above would, as of the Common Stock Record Date, exceed the Call Price as of such record date, the number of shares of such capital stock to be distributed with respect to each share of Series C Preferred Stock shall be reduced so that the Spinoff Fair Value thereof equals the Call Price on such record date.

Whether, after the distribution of the capital stock of the Spinoff Company, the Spinoff Preferred Stock has terms substantially equivalent to the Series C Preferred Stock prior to

such distribution will be determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive. Such Spinoff Company Preferred Stock may be considered substantially equivalent to the Series C Preferred Stock notwithstanding that, among other things, the tax treatment of a holder of Spinoff Company Preferred Stock differs from the tax treatment of a holder of Series C Preferred

Stock, including by reason of a future change in U.S. law.

(vi) If there shall occur a conversion or exchange of the Common Stock into, or the right to receive, other securities or other property of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) or a wholly owned subsidiary of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) (in each case other than in connection with a Merger or Consolidation) or if there shall occur a merger or consolidation of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) with or into a wholly owned subsidiary of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) that results in the conversion or exchange of the Common Stock into, or the right to receive, other securities or other property (whether of the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) or any other entity), then the Series C Preferred Stock will thereafter no longer be subject to conversion or redemption into shares of Common Stock pursuant to paragraphs (4)(a), (4)(b), 4(c) and 4(e), but instead will be subject to conversion or redemption into the kind and amount of securities or other property which the holder of such shares of Series C Preferred Stock would have owned immediately after such conversion or exchange or merger or consolidation if such shares of Series C Preferred Stock had been converted or redeemed into shares of Common Stock immediately before the effective time of such conversion or exchange or merger or consolidation. If this paragraph (4)(d)(vi) applies, then no adjustment in respect of the same conversion or exchange or merger or consolidation shall be made pursuant to the other provisions of this paragraph (4)(d). In the event that at any time, as a result of an adjustment made pursuant to this paragraph (4)(d)(vi), the Series C Preferred Stock shall become subject to conversion or redemption into any securities other than shares of Common Stock, thereafter the number of such other securities so issuable upon conversion or redemption of the shares of Series C Preferred Stock shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the shares of Series C Preferred Stock contained in this paragraph (4)(d).

(vii) Anything in this paragraph (4) notwithstanding, the Corporation shall be entitled to make such adjustments in the Common Equivalent Rate, in addition to those required by this paragraph (4), as the Corporation in its sole discretion may

determine to be advisable, in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or a

distribution of securities convertible into or exchangeable for stock (or any transaction which could be treated as any of the foregoing transactions pursuant to Section 305 of the Internal Revenue Code of 1986, as amended) hereafter made by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) or any other entity) to its stockholders shall not be taxable. If the Corporation determines that an adjustment to the Common Equivalent Rate should be made pursuant to this paragraph 4(d)(vii), an adjustment shall be made effective as of such date as is determined by the Board of Directors of the Corporation. The determination of the Board of Directors of the Corporation as to whether an adjustment to the Common Equivalent Rate should be made pursuant to the foregoing provisions of this paragraph 4(d)(vii), and, if so, as to what adjustment should be made and when, shall be conclusive, final and binding on the Corporation and all stockholders of the Corporation.

(viii) As used in this paragraph (4), the "Current Market Price" of a share of Common Stock on any date shall be, except as otherwise specifically provided, the average of the daily Closing Prices (as defined in paragraph 4(i)(iii)) for the twenty consecutive Trading Dates ending on and including the date of determination of the Current Market Price; provided, however, that for purposes of paragraph 4(c), the Current Market Price shall be the average of the daily Closing Prices for the five consecutive Trading Days ending on and including the date of determination of the Current Market Price unless the Closing Price for the Trading Date next following such five-day period (the "next-day closing price") is less than 95% of such average, then the Current Market Price per share of Common Stock on such date of determination shall be the next-day closing price; and provided, further, that, with respect to any redemption, conversion or antidilution adjustment if any event that results in an adjustment of the Common Equivalent Rate occurs during the period beginning on the first day of the applicable determination period and ending on the applicable redemption or conversion date, the Current Market Price as determined pursuant to the foregoing will be appropriately adjusted to reflect the occurrence of such event.

(ix) In any case in which paragraph (4)(d) shall require that an adjustment as a result of any event become effective as of the close of business on the record date and the date fixed for conversion pursuant to paragraph (4)(a), 4(b), 4(c) or 4(e) occurs after such record date, but before the occurrence of such event the Corporation may in its sole discretion elect to defer the following until after the occurrence of such event: (A) issuing to the holder of any converted shares of the Series C Preferred Stock the additional shares of Common Stock issuable upon such conversion before giving effect to such adjustment and (B) paying to such holder

any amount in cash in lieu of a fractional share of Common Stock pursuant to paragraph (4) (g) .

(x) Before taking any action which would cause an adjustment to the Common Equivalent Rate that would cause the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) to issue shares of Common Stock for consideration below the then par value (if any) of the Common Stock upon conversion of the Series C Preferred Stock, the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) may validly and legally issue fully paid and nonassessable shares of such Common Stock at such adjusted Common Equivalent Rate.

(e) Optional Tender Offer Conversion. (i) If pursuant to

the rules promulgated under the Securities Exchange Act of 1934, as amended, the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) has recommended acceptance of (or has expressed no opinion and is remaining neutral toward) a tender offer which would result in the ownership by the bidder (as defined in paragraph (i) (vii)) therein (or an affiliate (as defined in paragraph (i) (viii)) of the bidder) of more than 50% of the then outstanding shares of Common Stock of the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) (a "Recommended Tender Offer"), then prior to the expiration of such Recommended Tender Offer the Corporation shall give notice to each holder of record of Series C Preferred Stock that such holder may, at its option, convert (an "Optional Tender Offer Conversion") its shares of Series C Preferred Stock, in whole (but not in part), (A) into shares of Common Stock at the Common Equivalent Rate in effect at the close of business on the date prior to the date of expiration or termination of such Recommended Tender Offer (the "Tender Offer Measurement Date") (provided that if the Call Price on the Tender Offer Measurement

Date is less than the product of (x) the Current Market Price of a share of Common Stock on the Tender Offer Measurement Date (which Current Market Price shall be appropriately adjusted for the purposes of this proviso if the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Tender Offer Measurement Date) and (y) the number of shares of Common Stock issuable upon conversion of a share of Series C Preferred Stock pursuant to the Optional Tender Offer Conversion, then the number of shares of Common Stock with respect to each share of Series C Preferred Stock issuable pursuant to the Optional Tender Offer Conversion shall be reduced so that the product referred to above in this proviso equals the Call Price on the Tender Offer Measurement Date), plus (B) the right to receive an amount of cash equal to all accrued and

unpaid dividends on the Series C Preferred Stock to and including the Tender Offer Measurement Date, whether or not declared, out of funds legally available therefor (and dividends shall cease to accrue on such share as of the Tender Offer Measurement Date); provided that the

Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) may, at its option, deliver on the Tender Offer Measurement Date, in lieu of some or all of the cash consideration described in paragraph 4(e)(i)(B), a number of shares of Common Stock (subject to paragraphs 4(b)(vii) and 4(d)(vi)) to be determined by dividing the amount of cash consideration that the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) has elected to pay in Common Stock by the Current Market Price of the Common Stock determined as of such Tender Offer Measurement Date (which Current Market Price shall be appropriately adjusted, if necessary, for the purposes of this proviso if either (x) the Corporation has made any antidilution adjustment to the Common Equivalent Rate pursuant to paragraph 4(d) with respect to an event which has not occurred as of such Tender Offer Measurement Date or (y) the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) has distributed cash or other property pursuant to clause (2) of paragraph 4(d)(iii), shares or other units of securities or assets pursuant to clause (2) of paragraph 4(d)(iv) or shares of capital stock of the Spinoff Corporation pursuant to clause (2) of paragraph 4(d)(v)). Notwithstanding the foregoing terms of this paragraph 4(e), if there shall have occurred an adjustment pursuant to paragraph 4(d)(vi) as a result of a conversion or exchange or merger or consolidation referred to in such paragraph prior to the Tender Offer Measurement Date, then with respect to the exercise of any such option referred to in the foregoing proviso by the Corporation (or its successor), the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall deliver out of funds legally available therefor on such Settlement Date, in lieu of shares of Common Stock as described in this paragraph 4(e), the kind of securities or other property received by holders of Common Stock as a result of such conversion or exchange or merger or consolidation, in the same relative proportions (if more than one kind of securities or other property was so received) as exist in the Common Equivalent Rate on the Tender Offer Measurement Date, with an aggregate market price (determined for any security or other property, to the extent possible, in the manner that the Current Market Price is determined for the Common Stock, and otherwise determined by the Board of Directors of the Corporation (or its successor), whose determination shall be conclusive), as of such Settlement Date, equal to the amount of cash consideration that the Corporation (or following the

application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) has elected to pay in such securities or other property.

(ii) The Corporation will provide notice of a Recommended Tender Offer to holders of record of the Series C Preferred Stock not less than fifteen business days prior to the

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expiration of such tender offer. Such notice shall specify the date of expiration or termination (as of the date of such notice) of such Recommended Tender Offer and that if such holder elects to convert its shares of Series C Preferred Stock into shares of Common Stock, dividends on such Series C Preferred Stock will cease to accrue dividends on the date they are converted. If the date of expiration of the Recommended Tender Offer is extended, the Corporation will be under no obligation to notify any holder of Series C Preferred Stock of such extension.

(iii) In order to exercise the Optional Tender Offer Conversion, a holder of Series C Preferred Stock shall (a) deliver a properly completed and duly executed written notice of election to convert on or prior to the Tender Offer Measurement Date, specifying the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued to the Corporation at its principal office or to the Conversion Agent, (b) surrender the certificate for such shares of Series C Preferred Stock to the Corporation or the Conversion Agent, accompanied, if so required by the Corporation or the Conversion Agent, by a written instrument or instruments of transfer in form reasonably satisfactory to the Corporation or the Conversion Agent duly executed by the holder or his attorney duly authorized in writing and (c) pay any transfer or similar tax required by paragraph (4)(n).

(iv) (A) Conversion shall be deemed to have been effected immediately prior to the termination or expiration of the Recommended Tender Offer (the "Conversion Date") on which the Corporation or the Conversion Agent shall have received the notice of election to convert, the surrendered certificate, any required payments and all other required documents. Immediately upon conversion, the rights of the holders of converted shares of Series C Preferred Stock shall cease and the persons entitled to receive the shares of Common Stock upon the conversion of such shares of Series C Preferred Stock shall be treated for all purposes as having become the owners of such shares of Common Stock.

(B) As promptly as practicable after the Conversion Date, the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall, unless otherwise instructed by the

holder, deliver or cause to be delivered at the office or agency of the Conversion Agent, to or upon the written order of the holder of the surrendered shares of Series C Preferred Stock, a certificate or certificates representing the number of fully paid and nonassessable shares of Common Stock into which such shares of Series C Preferred Stock have been converted in accordance with the provisions of this paragraph (4)(e), and any cash payable in respect of fractional shares as provided in paragraph (4)(g).

(f) Notice of Adjustments. Whenever the Common Equivalent Rate

is adjusted as herein provided, the Corporation shall:

(i) forthwith compute the adjusted Common Equivalent Rate in accordance with this paragraph (4) and prepare a certificate signed by the Chief Financial Officer, any Vice President, the Treasurer or Controller of the Corporation setting forth the adjusted Common Equivalent Rate, the method of calculation thereof in reasonable detail and the facts requiring such adjustment and upon which such adjustment is based, which certificate shall be conclusive, final and binding evidence of the correctness of the adjustment, and file such certificate forthwith with the transfer agent or agents for the Series C Preferred Stock and the Common Stock; and

(ii) mail a notice stating that the Common Equivalent Rate has been adjusted, the facts requiring such adjustment and the facts upon which such adjustment is based and setting forth the adjusted Common Equivalent Rate to the holders of record of the outstanding shares of the Series C Preferred Stock at or prior to the time the Corporation mails an interim statement to its stockholders covering the fiscal quarter during which the facts requiring such adjustment occurred, but in any event within 45 days of the end of such fiscal quarter.

(g) No Fractional Shares. (i) No fractional shares or scrip

representing fractional shares of Common Stock or other kind of security (including upon a distribution of the capital stock of the Spinoff Company, the Series C Preferred Stock and the Spinoff Company Preferred Stock) shall be issued upon the redemption or conversion of any shares of Series C Preferred Stock. Instead of any fractional interest in a share of Common Stock or such other security which would otherwise be deliverable upon the redemption or conversion of a share of Series C Preferred Stock, the Corporation (or following the application of the terms of paragraph

4(b) (i) (D), the Issuing Entity) shall either (A) pay to the holder of such share (a "Fractional Shareholder") an amount in cash (computed to the nearest cent) equal to (x) in the case of fractional shares of Common Stock, the same fraction of the Current Market Price of the Common Stock determined as of the Settlement Date, Conversion Date or the second Trading Date immediately preceding the relevant Notice Date, as the case may be, (y) in the case of fractional shares of Spinoff Corporation Preferred Stock and Series C Preferred Stock otherwise issuable upon a distribution of shares of capital stock of the Spinoff Corporation, an amount in cash equal, with respect to the Spinoff Corporation Preferred Stock, to the same fraction of the product of the Spinoff Fair Value per share of Common Stock and the common equivalent rate applicable to the Spinoff Corporation Preferred Stock and an amount in the cash equal, with respect to the Series C Preferred Stock, to the same fraction of

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the product of (A) the Current Market Price, as of the Common Stock Record Date, less the Spinoff Fair Value, and (B) the Common Equivalent Rate after giving effect to the issuance of the Spinoff Corporation Preferred Stock and (z) in the case of fractional shares of capital stock of the Spinoff Corporation, an amount in cash equal to the same fraction of the Spinoff Fair Value per share of Common Stock or (B) follow the procedures set forth in paragraph (g) (ii). If more than one share of Series C Preferred Stock shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Series C Preferred Stock so surrendered.

(ii) The Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) may, in lieu of paying cash to Fractional Shareholders as provided in paragraph (g) (i), issue, in full payment of the Corporation's (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity's) obligation with respect to such fractional interests, shares of stock equal to the aggregate of such fractional interests of such Fractional Shareholder and other Fractional Shareholders (aggregated over a reasonable period of time, but not in any event more than 20 business days, and rounded upwards to the nearest whole share) to an agent (the "Transfer Agent") appointed by the Corporation (or following the application of the terms of paragraph 4(b) (i) (D), the Issuing Entity) for such Fractional Shareholders for sale promptly by the Transfer Agent on behalf of the Fractional Shareholders. The Transfer Agent will remit promptly to such Fractional Shareholders their proportionate interest in the net proceeds (following the deduction of applicable transaction costs and computed to the nearest cent) from such sale.

(h) Cancellation. Shares of Series C Preferred Stock that have

been issued and reacquired in any manner, including shares purchased, exchanged, redeemed or converted, shall not be reissued as part of the Series C Preferred Stock and shall (upon compliance with any applicable provisions of the laws of the State of Delaware) have the status of authorized and unissued shares of the class of Preferred Stock undesignated as to series and may be redesignated and reissued as part of any series of the Preferred Stock.

(i) Definitions. As used in this paragraph (4):

(i) the term "business day" shall mean any day other than a Saturday, 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; provided that, from and after the effective time of a Merger or Consolidation in connection with which the Corporation elects the Existing Preferred Stock Option, the term "business day" shall mean any day other than a Saturday,

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Sunday or a day on which banking institutions in the State of New York and in the place where the Issuing Entity has its headquarters are authorized by law to close;

(ii) the term "Call Price" shall mean the per share price (payable in shares of Common Stock) at which the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) may redeem shares of Series C Preferred Stock, which shall be initially equal to \$112.286 declining by \$.01656 on each day following the date of issuance of the Series C Preferred Stock (computed on the basis of a 360-day year of twelve 30-day months) to \$95.246 on March 15, 1997 and equal to \$94.25 thereafter, if not sooner redeemed; provided that if the Corporation (or following the

application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) distributes cash or other property as provided in paragraph 4(d)(iii)(2), shares or other units of securities or assets as provided in paragraph 4(d)(iv)(2), shares of capital stock of the Spinoff Corporation as provided in paragraph 4(d)(v)(2) or if Non-Common Equity Merger Consideration is distributed in connection with a Merger or Consolidation, then (i) in the case of a distribution described in paragraph 4(d)(iii)(2), from and after the close of business on the record date related to such distribution (or in the

case of an Excess Purchase Payment, from and after the close of business on the payment date related to such Excess Purchase Payment) the Call Price per share for any day shall be reduced by the amount of cash or the value of other property (as determined by the Board of Directors of the Corporation, whose determination shall be conclusive) to be distributed pursuant thereto, (ii) in the case of a distribution described in paragraph 4(d)(iv)(2), from and after the close of business on the record date related to such distribution, the Call Price per share for any day shall be reduced by the Distribution Fair Value of such shares or other units of securities or assets, (iii) in the case of a distribution described in paragraph 4(d)(v)(2), from and after the close of business on the record date related to such distribution, the Call Price per share for any day shall be reduced by the Spinoff Fair Value of such shares of capital stock and (iv) in the case of a distribution of Non-Common Equity Merger Consideration, from and after the close of business on the Settlement Date related to the Merger or Consolidation, the Call Price per share shall be reduced by the Non-Common Equity Fair Value of such Non-Common Equity Merger Consideration; provided further that in no event shall the effect of

the foregoing proviso be to reduce the Call Price per share to an amount less than \$0.01; the Corporation will provide notice (subsequent to such reduction) of any reduction in the Call Price as a result of the application of the first proviso in this definition to each holder of record of Series C Preferred Stock at such holder's address as it appears on the stock register of the Corporation

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(provided, however, that no failure to give such notice nor any defect

therein shall affect the validity of the related reduction in the Call Price);

(iii) the term "Closing Price" on any day shall mean the closing sale price regular way (with any relevant due bills attached) 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 (with any relevant due bills attached), in each case on the New York Stock Exchange Consolidated Tape (or any successor composite tape reporting transactions on national securities exchanges), or, if the Common Stock is not listed or admitted to trading on such Exchange, on the principal national securities exchange on which the Common Stock is listed or admitted to trading (which shall be the national securities exchange on which the greatest number of shares of Common Stock has been traded during the five consecutive Trading Dates ending on and

including the date of determination of the Current Market Price), or, if not listed or admitted to trading on any national securities exchange, the average of the closing bid and asked prices regular way (with any relevant due bills attached) of the Common Stock on the over-the-counter market on the day in question as reported by the National Association of Securities Dealers Automated Quotation System ("NASDAQ"), or a similarly generally accepted reporting service, or if not so available as determined in good faith by the Board of Directors, on the basis of such relevant factors as it in good faith considers, in the reasonable judgment of the Board of Directors, appropriate. Notwithstanding the foregoing, from and after the effective time of a Merger or Consolidation in connection with which the Corporation elects the Existing Preferred Stock Option, if the Issuing Entity Common Equity is not trading on the New York Stock Exchange (or other national securities exchange or reported on NASDAQ as described above), "Closing Price" shall be (i) determined by reference to the principal trading market on which the Issuing Entity Common Equity is traded and (ii) converted, if necessary, into U.S. dollars by reference to the spot rate at noon local time in the relevant market at which, in accordance with the normal banking procedures, U.S. dollars could be purchased with the currency in which the Closing Price is denominated from major banks located in New York City or London, England;

(iv) the term "Notice Date" with respect to any notice given by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) in connection with a redemption or conversion of any of the Series C Preferred Stock shall be the commencement of the mailing of such notice to the holders of the Series C Preferred Stock in accordance with paragraph (4)(j);

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(v) the term "Settlement Date" shall mean the business day immediately prior to the effective date of a Merger or Consolidation;

(vi) the term "Trading Date" shall mean a date on which the New York Stock Exchange (or any successor to such Exchange) is open for the transaction of business. Notwithstanding the foregoing, from and after the effective time of a Merger or Consolidation in connection with which the Corporation elects the Existing Preferred Stock Option, if the Issuing Entity Common Equity is not traded on the New York Stock Exchange (or other national securities exchange or reported on NASDAQ as described under paragraph 4(i)(ii)), "Trading Date" shall be determined by reference to the principal trading market on which the Issuing Entity Common Equity is traded;

(vii) the term "bidder" shall have the meaning set forth in Rule 14d-1(b) (1) promulgated under the Securities Exchange Act of 1934, as amended;

(viii) the term "affiliate" shall have the meaning set forth in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended; and

(ix) the term "U.S. person" shall mean any citizen or resident of the United States and any domestic corporation, partnership, estate or trust.

(j) Notice of Redemption or Conversion. The Corporation will

provide notice of (i) any redemption or conversion (other than an Optional Tender Offer Conversion, but including any potential conversion upon the effectiveness of a Merger or Consolidation) of shares of Series C Preferred Stock to holders of record of the Series C Preferred Stock to be called or converted not less than 30 nor more than 60 days prior to the date fixed for such redemption or conversion, as the case may be, and (ii) the election of any of the options set forth in paragraph 4(b) (i) to the holders of record of the Series C Preferred Stock at least 30 days prior to the anticipated effective date of the Merger or Consolidation; provided, that the Corporation shall be under no obligation to notify any holder of any extension of such effective date. Such notice shall be provided by mailing such notice first class postage prepaid, to each holder of record of the Series C Preferred Stock, at such holder's address as it appears on the stock register of the Corporation; provided, however, that no failure to give such notice nor any defect therein shall affect the validity of the proceeding for the redemption or conversion of any shares of Series C Preferred Stock to be redeemed or converted except as to the holder to whom the Corporation has failed to give said notice or except as to the holder whose notice was defective. Each such notice shall state, as appropriate and to the extent determinable, the following:

(A) the redemption, conversion or exchange date;

(B) that all outstanding shares of Series C Preferred Stock are to be redeemed or converted or, in the case of a call for redemption pursuant to paragraph 4(c) of fewer than all outstanding shares of Series C Preferred Stock pursuant to paragraph (4) (c), the number of such shares held by such holder to be redeemed;

(C) in the case of a call for redemption pursuant to paragraph (4)(c), the Call Price, the number of shares of Common Stock deliverable upon redemption of each share of Series C Preferred Stock to be redeemed and the Current Market Price used to calculate such number of shares of Common Stock subject to any subsequent adjustments pursuant to paragraph 4(d);

(D) whether the Corporation is exercising any option to deliver shares of Common Stock in lieu of cash (in the case of a conversion pursuant to paragraph (4)(b)(i)(A) or (4)(b)(v)), the method of calculating the Current Market Price to be used to calculate the number of such shares of Common Stock and, if the Corporation is exercising such option in respect of less than all the cash that is deliverable by the Corporation upon such conversion, the portion of such cash in lieu of which Common Stock will be delivered;

(E) whether the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) is electing to exercise the Common Conversion Option, the Issuing Entity Preferred Stock Conversion Option, the Corporation Preferred Stock Conversion Option or the Existing Preferred Stock Option (in the case of a conversion pursuant to paragraph (4)(b)), and if the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) elects the Issuing Entity Preferred Stock Conversion Option, the Corporation Preferred Stock Conversion Option or the Existing Preferred Stock Option, that such holder shall be entitled to exercise the Holder Opt-Out Right;

(F) the place or places where certificates for such shares are to be surrendered for redemption or conversion; and

(G) that dividends on the shares of Series C Preferred Stock to be redeemed or converted will cease to accrue on such redemption or conversion date or, in the case of a conversion pursuant to paragraph (4)(b), on the related Settlement Date, unless the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall default in delivering the shares of

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Common Stock and cash, if any, payable by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) pursuant to this paragraph (4), at the time and place specified in such notice.

(k) Deposit of Shares and Funds. The Corporation's (or

following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity's) obligation to deliver shares of Common Stock and provide funds in accordance with this paragraph (4) shall be deemed fulfilled if, on or before a redemption or conversion date, the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) shall deposit, with a bank or trust company, or an affiliate of a bank or trust company, having an office or agency in New York City and having a capital and surplus of at least \$50,000,000, such number of shares of Common Stock as are required to be delivered by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) pursuant to this paragraph (4) upon the occurrence of the related redemption or conversion (including any payment of fractional share amounts pursuant to paragraph (4)(g)(i)), together with funds (or, in the case of a conversion pursuant to paragraph 4(b), shares of Common Stock and/or funds) sufficient to pay all accrued and unpaid dividends on the shares to be redeemed or converted as required by this paragraph (4), in trust for the account of the holders of the shares to be redeemed or converted (and so as to be and continue to be available therefor), with irrevocable instructions and authority to such bank or trust company that such shares and funds be delivered upon redemption or conversion of the shares of Series C Preferred Stock so called for redemption or converted. Any interest accrued on such funds shall be paid to the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) from time to time. Any shares of Common Stock or funds so deposited and unclaimed at the end of two years from such redemption or conversion date shall be repaid and released to the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity), after which the holder or holders of such shares of Series C Preferred Stock so called for redemption or converted shall look only to the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) for delivery of such shares of Common Stock or funds.

(l) Surrender of Certificates; Status. Each holder of shares of

Series C Preferred Stock to be redeemed or converted shall surrender the certificates evidencing such shares (properly endorsed or assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state) to the Corporation at the place designated in the notice of such redemption or conversion and shall thereupon be entitled to receive certificates evidencing shares of Common Stock and to receive any funds payable pursuant to this paragraph 4 following such surrender and following the date of such redemption or conversion. In case fewer than all the shares represented by any

such surrendered certificate are called for redemption, a new certificate shall be issued at the expense of the Corporation representing the unredeemed shares. If such notice of redemption or conversion shall have been given, and if on the date fixed for redemption or conversion shares of Common Stock and funds necessary for the redemption or conversion shall have been either set aside by the Corporation (or following the application of the terms of paragraph 4(b)(i)(D), the Issuing Entity) separate and apart from its other funds or assets in trust for the account of the holders of the shares to be redeemed or converted (and so as to be and continue to be available therefor) or deposited with a bank or trust company or affiliate thereof as provided in paragraph 4(k), then, notwithstanding that the certificates evidencing any shares of Series C Preferred Stock so called for redemption or subject to conversion shall not have been surrendered, the shares represented thereby so called for redemption or subject to conversion shall be deemed no longer outstanding, dividends with respect to the shares so called for redemption or subject to conversion shall cease to accrue after the date fixed for redemption or conversion or, in the case of a conversion pursuant to paragraph (4)(b), on the related Settlement Date, and all rights with respect to the shares so called for redemption or subject to conversion shall forthwith after such date cease and terminate, except for the right of the holders to receive the shares of Common Stock and funds, if any, payable pursuant to this paragraph 4 without interest upon surrender of their certificates therefor.

(m) Dividend Payments. The holders of shares of Series C

Preferred Stock at the close of business on a dividend payment record date shall be entitled to receive the dividend payable on such shares on the corresponding Dividend Payment Date notwithstanding the call or conversion thereof (except that holders of shares called for redemption or to be converted on a date occurring between such record date and the Dividend Payment Date or on such Dividend Payment Date shall not be entitled to receive such dividend on such Dividend Payment Date but instead will receive an amount equal to accrued and unpaid dividends to such date or the related Settlement Date, as the case may be) or the Corporation's default in payment of the dividend due on such Dividend Payment Date.

(n) Payment of Taxes. The Corporation will pay any and all

documentary, stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on the redemption or conversion of shares of Series C Preferred Stock pursuant to this paragraph (4); provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any registration of transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the registered holder of Series C Preferred Stock redeemed or converted or to be redeemed or converted, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the

Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

(o) Notwithstanding any other provision of this paragraph 4, no dividend, redemption, repurchase, exchange or conversion or other distribution shall be made to or from the holders of Series C Preferred Stock other than out of funds legally available therefor.

(5) Liquidation Preference. (a) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of shares of Series C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after payment or provision for payment of any Senior Securities, an amount per share of Series C Preferred Stock in cash equal to the sum of (i) \$65.00 (or, following any issuance of Spinoff Corporation Preferred Stock, the greater of \$65.00 and the fair market value per share of Series C Preferred Stock (as determined, on or within five business days after the date of issuance of the Spinoff Corporation Preferred Stock, by the Board of Directors of the Corporation, whose determination shall be conclusive) as of such date of issuance), plus (ii) all accrued and unpaid dividends thereon to the date of liquidation, dissolution or winding up, before any payment shall be made or any assets distributed to the holders of any of the Junior Securities. If the assets of the Corporation are not sufficient to pay in full the liquidation payments payable to the holders of outstanding shares of the Series C Preferred Stock and any Parity Securities, then the holders of all such shares shall share ratably in such distribution of assets in accordance with the amount which would be payable on such distribution if the amounts to which the holders of outstanding shares of Series C Preferred Stock and the holders of outstanding shares of such Parity Securities are entitled were paid in full. Except as provided in this paragraph (5) (a), holders of Series C Preferred Stock shall not be entitled to any distribution in the event of liquidation, dissolution or winding up of the affairs of the Corporation.

The Corporation will provide notice to holder of record of Series C Preferred Stock not more than thirty days after any adjustment to the liquidation preference of the Series C Preferred in connection with the issuance of the Spinoff Corporation Preferred Stock.

(b) For the purposes of this paragraph (5), neither the voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of

the property or assets of the Corporation nor the consolidation or merger of the Corporation with or into one or more other corporations nor the consolidation or merger of one or more corporations with or into the Corporation shall be

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deemed to be a voluntary or involuntary liquidation, dissolution or winding up.

(6) Voting Rights. (a) The holders of record of shares of Series C Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this paragraph (6) or as otherwise provided by law.

(b) The holders of shares of Series C Preferred Stock shall be entitled to vote on all matters submitted to a vote of the holders of Common Stock, voting together with the holders of Common Stock (and any other capital stock of the Corporation entitled to vote together with the Common Stock) as one class; provided, however, that the holders of Series C Preferred Stock shall not be entitled to vote on any increase or decrease in the number of authorized shares of any class or classes of stock; and provided further that in the event of a Merger or Consolidation in which the Corporation elects the Existing Preferred Stock Option, the holders of shares of Series C Preferred Stock will no longer be entitled to vote on such matters submitted to a vote of the holders of Common Stock, unless the Board of Directors of the Corporation specifically provides otherwise. Each share of the Series C Preferred Stock shall be entitled to a number of votes equal to one-tenth of the Common Equivalent Rate; it being understood that whenever the Common Equivalent Rate is adjusted as provided in paragraph 4(d) hereof, the voting rights of the Series C Preferred Stock shall also be similarly adjusted.

(c) (i) If at any time or times dividends payable on all series of Preferred Stock, including the Series C Preferred Stock, shall be in arrears and unpaid for six quarterly periods, then the number of directors constituting the Board of Directors, without further action, shall be increased by two (2) and the holders of shares of Series C Preferred Stock shall have the right, together with the holders of all other outstanding series of the Preferred Stock entitled to vote thereon, to elect the directors of the Corporation to fill such newly created directorships, the remaining directors to be elected by the other class or classes of stock entitled to vote therefor, at each meeting of stockholders held for the purpose of electing directors; provided, that in no event shall such holders have the right to elect more than 25% of the total number of directors of the Corporation; provided, further, that, notwithstanding the

foregoing proviso, such holders shall have the right to elect not less than one director pursuant to this paragraph (6)(c)(i). While holders of shares of such series of Preferred Stock are entitled to elect two directors, they shall not be entitled to participate with the holders of Common Stock in the election of any other directors, but shall continue to be entitled to vote with the holders of Common Stock upon each other matter coming before any meeting of the stockholders.

(ii) Whenever such voting right shall have vested, such right may be exercised initially either at a special meeting

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of the holders of shares of Series C Preferred Stock together with the holders of all other outstanding series of the Preferred Stock entitled to vote thereon, called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at such meetings or by the written consent of such holders pursuant to Section 228 of the General Corporation Law of the State of Delaware. Such voting right shall continue until such time as all cumulative dividends accumulated on all outstanding series of Preferred Stock shall have been paid in full or declared and set aside for payment in full, at which time such voting right of such holders shall terminate, subject to revesting in the event of each and every subsequent failure of the Corporation to pay dividends for the requisite number of quarters as described above.

(iii) At any time when such voting right shall have vested in the holders of shares of Series C Preferred Stock together with all other series of Preferred Stock entitled to vote thereon and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of 10% of the holders of record of shares of such series of Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of holders of shares of such series of Preferred Stock. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by the proper officers of the Corporation within 30 days after the personal service of such written request upon the Secretary of the Corporation, or within 30 days after mailing the same within the United States, by registered mail, addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of 10% of the shares of such series of Preferred Stock then outstanding may designate in writing a holder of shares of such series of Preferred Stock to call such

meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the same place as is elsewhere provided in this paragraph (6)(c)(iii). Any holder of shares of such series of Preferred Stock that would be entitled to vote at such meeting shall have access to the stock books of the Corporation for such series of Preferred Stock for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this paragraph. Notwithstanding the provisions of this paragraph, however, no such special meeting shall be called during a period within 90 days immediately preceding the date fixed for the next annual meeting of stockholders.

(iv) At any meeting held for the purpose of electing directors at which the holders of shares of Series C Preferred

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Stock together with all other series of Preferred Stock entitled to vote thereon shall have the right to elect directors as provided herein, the presence in person or by proxy of the holders of at least a majority of the then outstanding shares of such series of Preferred Stock shall be required and be sufficient to constitute a quorum of such series for the election of directors by such series. At any such meeting or adjournment thereof (x) the absence of a quorum of the holders of shares of such series of Preferred Stock shall not prevent the election of directors other than those to be elected by the holders of stock of such series and the absence of a quorum or quorums of the holders of capital stock entitled to elect such other directors shall not prevent the election of directors to be elected by the holders of shares of such series of Preferred Stock and (y) in the absence of a quorum of the holders of shares of such series of Preferred Stock, a majority of such holders present in person or by proxy shall have the power to adjourn the meeting for the election of directors which the holders of shares of such series of Preferred Stock may be entitled to elect, from time to time, without notice (except as required by law) other than announcement at the meeting, until a quorum shall be present.

(v) The term of office of all directors elected by the holders of shares of Series C Preferred Stock together with all other series of Preferred Stock entitled to vote thereon pursuant to paragraph (6)(c)(i) in office at any time when the aforesaid voting rights are vested in the holders of shares of such series of Preferred Stock shall terminate upon the election of their successors at any meeting of stockholders for the purpose of electing directors. Upon any termination of the aforesaid voting rights in accordance with paragraph (6)(c)(ii), the term of office of all directors elected by the holders of shares of such series of

Preferred Stock pursuant to paragraph (6)(c)(i) then in office shall thereupon terminate and upon such termination the number of directors constituting the Board of Directors shall, without further action, be reduced by two (2) (or such other lesser number by which the number of directors constituting the Board of Directors shall have been increased pursuant to paragraph (6)(c)(i) hereof), subject always to the increase of the number of directors pursuant to paragraph (6)(c)(i) in case of the future right of the holders of shares of such series of Preferred Stock to elect directors as provided herein.

(vi) In case of any vacancy occurring among the directors elected pursuant to paragraph (6)(c)(i), the remaining director who shall have been so elected may appoint a successor to hold office for the unexpired term of the director whose place shall be vacant. If all directors so elected by the holders of shares of Series C Preferred Stock together with all other series of Preferred Stock entitled to vote thereon shall cease to serve as directors before their terms shall expire, the holders of shares of such series of Preferred Stock then outstanding may, at a special meeting of the holders called as provided above, elect

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successors to hold office for the unexpired terms of the directors whose places shall be vacant.

(d) So long as any shares of the Series C Preferred Stock are outstanding (except when notice of the redemption or conversion of all outstanding shares of Series C Preferred Stock has been given pursuant to paragraph (4)(j) and shares of Common Stock and any necessary funds have been deposited in trust for such redemption or conversion pursuant to paragraph (4)(k)), the Corporation shall not, without the affirmative vote or consent of the holders of at least a majority of the shares of Series C Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, authorize any new class of Parity Securities.

(e) So long as any shares of the Series C Preferred Stock are outstanding (except when notice of the redemption or conversion of all outstanding shares of Series C Preferred Stock has been given pursuant to paragraph (4)(j) and shares of Common Stock and any necessary funds have been deposited in trust for such redemption or conversion pursuant to paragraph (4)(k)), the Corporation shall not, without the affirmative vote or consent of the holders of at least 66-2/3% of the shares of Series C Preferred Stock and any other series of Preferred Stock entitled to vote

thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, authorize any new class of Senior Securities.

(f) Except for the amendments contemplated by the exercise of the Existing Preferred Stock Option, so long as any shares of the Series C Preferred Stock are outstanding (except when notice of the redemption or conversion of all outstanding shares of Series C Preferred Stock has been given pursuant to paragraph (4)(j) and shares of Common Stock and any necessary funds have been deposited in trust for such redemption or conversion pursuant to paragraph (4)(k)), the Corporation shall not, without the affirmative vote or consent of the holders of at least 66-2/3% of the shares of Series C Preferred Stock and any other series of Preferred Stock entitled to vote thereon at the time outstanding voting or consenting, as the case may be, together as one class, given in person or by proxy, either in writing or by resolution adopted at an annual or special meeting called for the purpose, amend the Certificate of Incorporation or this Certificate of Designation so as to affect materially and adversely the specified rights, preferences, privileges or voting rights of holders of shares of Preferred Stock.

(g) (i) Except as set forth in paragraphs (6)(d) and (6)(e) above, the creation, authorization or issuance of any

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shares of any Junior Securities, Parity Securities or Senior Securities, (ii) the creation of any indebtedness of any kind of the Corporation, or (iii) the increase or decrease in the amount of authorized capital stock of any class, including Preferred Stock, shall not require the consent of the holders of Series C Preferred Stock and shall not be deemed to affect materially and adversely the rights, preferences, privileges or voting rights of holders of shares of Series C Preferred Stock.

(7) Increase in Shares. The number of shares of Series C Preferred Stock may, to the extent of the Corporation's authorized and unissued Preferred Stock, be increased by further resolution duly adopted by the Board of Directors and the filing of a certificate of increase with the Secretary of State of the State of Delaware.

(8) Limitations. Except as may otherwise be required by law, the shares of Series C Preferred Stock shall not have any powers, preferences or relative, participating, optional or other special rights other than those specifically set forth in this resolution (as such resolution may be amended from time to time) or otherwise in the

ARTICLE FIFTH

The Board of Directors of the Corporation, acting by majority vote, may alter, amend or repeal the By-Laws of the Corporation.

ARTICLE SIXTH

Except as otherwise provided by the Delaware General Corporation Law as the same exists or may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE SEVENTH

So long as the Corporation's Senior Converting Debentures Due 2009 are outstanding, the Corporation and its Subsidiaries shall not engage in, directly or indirectly, any purchase, sale, or other acquisition or disposition of a material amount of assets of the Corporation and its Subsidiaries, taken as a whole, with any Affiliate of the Corporation (other than a wholly owned subsidiary of the Corporation) except on terms that are not less favorable to the Corporation than those which would have been obtainable at the time of such transaction from a

person who is not such an Affiliate, without the approval of the holders of a majority of shares of the common stock of the Corporation issued and then outstanding not held by Affiliates of the Corporation; provided, however, than any purchase, sale or other acquisition or disposition of a material amount of assets of the Corporation with any Affiliate of the Corporation shall be deemed to be on terms that are not less favorable to the Corporation than those which would have been obtainable at the time of the transaction from a person who is not an Affiliate if the Corporation receives a written opinion from a nationally recognized investment bank stating that the transaction is fair to the Corporation from a financial point of view. For the purposes of this Article SEVENTH and Article EIGHTH, the terms "Affiliate" and "Subsidiary" shall have the meanings set forth in the indenture relating to the Senior Converting Debentures Due

ARTICLE EIGHTH

If Senior Converting Debentures shall have been converted into not less than a number of shares of common stock of the Corporation equal to 12 1/2% of the fully diluted common stock of the Corporation at the Conversion Date (as defined in the indenture pursuant to which the Senior Converting Debentures have been issued), the Corporation shall not, without approval of the holders of a majority of shares of the common stock of the Corporation issued and then outstanding not held by Affiliates of the Corporation, engage in any transaction subject to Rule 13e-3 promulgated under the Securities Exchange Act of 1934, as amended ("Rule 13e-3"), during the period from the fourth anniversary of the effective time of the merger of RJR Acquisition Corporation with and into RJR Nabisco, Inc. (the "Effective Time") to the fifth anniversary of the Effective Time. For the purposes of this Article EIGHTH only, it is assumed that the common stock of the Corporation is subject to the application of Rule 13e-3.

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IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation, having been duly adopted by the Board of Directors of the Corporation in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law of the State of Delaware, has been executed this ____ day of _____, 199__.

RJR NABISCO HOLDINGS CORP.

By: _____
 Jo-Ann Ford
 Senior Vice President
 and Secretary

[CORPORATE SEAL]

Attest:

By: _____
 Suzanne P. Jenney

RJR NABISCO HOLDINGS CORP.
 COMPUTATION OF EARNINGS PER SHARE
 (DOLLARS IN MILLIONS EXCEPT PER SHARE AMOUNTS)

<TABLE>
 <CAPTION>

	THREE MONTHS ENDED MARCH 31, 1995		THREE MONTHS ENDED MARCH 31, 1994	
	PRIMARY	FULLY DILUTED (A)	PRIMARY	FULLY DILUTED (A)
<S>	<C>	<C>	<C>	<C>
Average number of common and common equivalent shares outstanding during the period (in thousands):				
Common Stock and Series C Depositary Shares issued and outstanding at beginning of period.....	325,107	325,107	269,602	269,602
Average number of shares of common stock issued during the period (including shares of common stock issued during the period through the exercise of options).....	85	85	93	93
Average number of shares related to value of restricted stock earned during the period.....	2	2	--	--
Average number of stock options outstanding during the period and shares issuable under performance shares granted.....	1,209	1,368	3,399	3,399
Shares issuable upon conversion of ESOP convertible preferred stock.....	--	3,055	--	3,112
Average number of common and common equivalent shares outstanding during the period.....	326,403	329,617	273,094	276,206
Income (loss) applicable to common stock:				
Income before extraordinary item.....	\$ 198	\$ 198	\$ 194	\$ 194
Preferred stock dividends.....	(33)	(29)	(33)	(29)
Income tax benefit on ESOP preferred stock dividends.....	--	(1)	--	--
Income before extraordinary item applicable to common stock.....	165	168	161	165
Extraordinary item.....	--	--	1	1
Net income applicable to common stock.....	\$ 165	\$ 168	\$ 162	\$ 166
Income (loss) per common and common equivalent share:				
Income before extraordinary item.....	\$.51	\$.51	\$ 0.59	\$ 0.60
Extraordinary item.....	--	--	--	--
Net income.....	\$.51	\$.51	\$ 0.59	\$ 0.60

</TABLE>

(A) For purposes of this Exhibit, the calculations of fully diluted earnings per share include common stock equivalents and other potentially dilutive securities that produce an anti-dilutive result.

RJR NABISCO, INC.
 COMPUTATION OF RATIO OF EARNINGS TO FIXED CHARGES
 (DOLLARS IN MILLIONS)

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	THREE MONTHS ENDED MARCH 31, 1995 -----
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Earnings before fixed charges:	
Income before minority interest in income of Nabisco.....	\$208
Provision for income taxes.....	159

Income before income taxes.....	367
Interest and debt expense.....	220
Interest portion of rental expense.....	13

Earnings before fixed charges.....	\$600

Fixed charges:	
Interest and debt expense.....	\$220
Interest portion of rental expense.....	13
Capitalized interest.....	3

Total fixed charges.....	\$236

Ratio of earnings to fixed charges.....	2.5

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THIS EXHIBIT CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM RJRN HOLDINGS' CONSOLIDATED CONDENSED FINANCIAL STATEMENTS AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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<CIK> 0000847903

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<MULTIPLIER> 1,000,000

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THIS EXHIBIT CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM RJRN'S CONSOLIDATED CONDENSED FINANCIAL STATEMENTS AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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<MULTIPLIER> 1,000,000

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