JAMES HARDIE INDUSTRIES N.V.
Form F-4/A
July 15, 2009

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As filed with the Securities and Exchange Commission on July 15, 2009
Registration No. 333-160177

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

Amendment No. 3
to
Form F-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

JAMES HARDIE INDUSTRIES N.V.
(Exact name of registrant as specified in its charter)

The Netherlands	**3272**	**Not Applicable**
(State or other jurisdiction of incorporation or organization)	*(Primary Standard Industrial Classification Code Number)*	*(I.R.S. Employer Identification No.)*

Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
+31 20 301 2980 (Telephone) +31 20 404 2544 (Facsimile)
(Address, including zip code and telephone number, including area code of registrant s principal executive offices)

CT Corporation System
111 Eighth Avenue
New York, New York 10011
(212) 894-8940
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:
Michael E. Gizang
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036-6522
(212) 735-3000

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and all other conditions to the consummation of the transactions described in this prospectus have been satisfied or waived.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: o

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered[1]	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price[3]	Amount of Registration Fee[4][5]
James Hardie Industries SE Ordinary Shares	102,000,000[2]	$3.21	$327,205,851	$18,258

(1) American depositary shares issuable on deposit of securities representing James Hardie Industries SE ordinary shares registered hereby have been registered pursuant to a separate Registration Statement on Form F-6.

(2) Based on (i) the estimated number of James Hardie Industries N.V. ordinary shares beneficially held by securityholders resident in the United States of America, and (ii) the one-to-one basis on which each James Hardie Industries N.V. ordinary share will be transformed into a James Hardie Industries SE ordinary share.

(3) The proposed maximum aggregate offering price of all of the James Hardie Industries SE shares registered in connection with the Proposal is $327,205,851. Pursuant to Rules 457(f)(1) and 457(c) under the Securities Act and solely for the purpose of calculating the registration fee, the proposed maximum aggregate offering price is equal to the aggregate market value of the approximate number of James Hardie Industries N.V. ordinary shares to be transformed in the Proposal (calculated as set forth in note (2) above) based upon a market value of $3.21 per James Hardie Industries N.V. ordinary share, the average of the high and low sale prices per James Hardie Industries N.V. CUFS on the ASX Limited on June 19, 2009 and converted to United States dollars based on the Federal Reserve Bank of New York foreign exchange rate for Australian dollars on June 19, 2009.

(4) Calculated by multiplying 0.00005580 by the proposed maximum aggregate offering price.

(5) Previously paid.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information contained in this preliminary prospectus may change. The registrant may not complete the transaction and issue these securities until the registration statement filed with the US Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state or jurisdiction where the offer is not permitted.

PRELIMINARY COPY SUBJECT TO COMPLETION, JULY 15, 2009

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IMPORTANT NOTICES

Terminology

In this Explanatory Memorandum, references to:

we, us, our, the company, Dutch NV, and JHI NV refer to James Hardie Industries N.V. We refer to James Hardie Industries SE when domiciled in The Netherlands as Dutch SE and James Hardie Industries SE when domiciled in Ireland as Irish SE.

James Hardie refers collectively to James Hardie Industries N.V. and its controlled subsidiaries.

CUFS refers to CHESS Units of Foreign Securities, each of which represents a beneficial ownership interest in an underlying ordinary share (which we refer to as shares).

ADRs refers to American Depositary Receipts, which are the receipts or certificates that evidence ownership of American Depositary Shares (which we refer to as ADSs), each of which represents a beneficial ownership interest in five CUFS.

shareholders refers to holders of CUFS, ADSs or CUFS converted to shares.

A$ refers to Australian dollars and US$ refers to US dollars.

Certain other capitalised terms used in this Explanatory Memorandum have the meanings ascribed to them in the Glossary in Section 19.

This Explanatory Memorandum, which constitutes a prospectus under US federal securities laws, has been prepared in connection with the registration of 102,000,000 shares of Dutch SE, with the number of shares being registered based on (i) the estimated number of JHI NV shares beneficially held by securityholders resident in the US, and (ii) the one-to-one basis on which each JHI NV share will be transformed into a Dutch SE share.

This Explanatory Memorandum and the Notice of Meetings included herein have been prepared to assist shareholders in deciding how to vote on Stage 1 of the Proposal. You should read this Explanatory Memorandum and the Notice of Meetings in their entirety before making a decision about how to vote on the resolution to be considered at the extraordinary general meeting.

This Explanatory Memorandum contains important information relating to the Proposal. The Notice of Meetings contains important information relating to voting at the extraordinary general meeting, including the record date, the quorum and vote required for approval and how to vote your CUFS, ADSs and CUFS you have converted to shares and the resolution that shareholders are being asked to approve with respect to Stage 1 of the Proposal. A separate notice of meetings regarding the matters to be considered at our annual general meeting, which will be held immediately following the extraordinary general meeting, will be sent to you together with this Explanatory Memorandum. The notice of meetings for our annual general meeting sets forth, among other things, a description of the matters that will be considered at the annual general meeting and the resolutions that shareholders will be asked to approve at that meeting. If for any reason you do not receive the notice of meetings for the annual general meeting, you should contact us at the address, telephone numbers or e-mail address identified below.

Information Incorporated by Reference

This Explanatory Memorandum incorporates important business and financial information about us by reference and, as a result, this information is not included in or delivered with this Explanatory Memorandum. For a list of those documents that are incorporated by reference into this Explanatory Memorandum, see Incorporation of Certain Documents by Reference in Section 14.

Documents incorporated by reference are available from us upon oral or written request without charge. As we file annual reports and furnish other information to the US Securities and Exchange Commission, you also may obtain documents incorporated by reference into this Explanatory Memorandum from the website of the US Securities and Exchange Commission at the URL (or uniform resource locator) http://www.sec.gov or by requesting

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them from us by calling the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (Central Time)) or in writing by regular and electronic mail at the following address:

James Hardie Industries N.V.
Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
Attention: Company Secretary
E-Mail: infoline@jameshardie.com

In order to receive timely delivery of the documents in advance of the extraordinary general meeting for Stage 1 of the Proposal, you should make your request no later than August 14, 2009.

A number of documents related to the Proposal also may be found at the Investor Relations area of our website (www.jameshardie.com, select James Hardie Investor Relations).

Forward-looking Statements

This Explanatory Memorandum, Notice of Meetings and the documents incorporated herein by reference contain forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the US Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars, invitation memoranda and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, existing and potential lenders, representatives of the media and others. Statements that are not historical facts are forward-looking statements and for US purposes such forward-looking statements are statements made pursuant to the Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995. Examples of forward-looking statements include:

- statements about our future performance;
- projections of our results of operations or financial condition;
- statements regarding our plans, objectives or goals, including those relating to our strategies, initiatives, competition, acquisitions, dispositions and/or our products;
- expectations concerning the costs associated with the suspension or closure of operations at any of our plants and future plans with respect to any such plants;
- expectations that our credit facilities will be extended or renewed;
- expectations concerning dividend payments;
- statements concerning our corporate and tax domiciles and potential changes to them;
- statements regarding tax liabilities and related audits and proceedings;
- statements as to the possible consequences of proceedings brought against us and certain of our former directors and officers by the Australian Securities & Investments Commission;

expectations about the timing and amount of contributions to the Asbestos Injuries Compensation Fund, a special purpose fund for the compensation of proven Australian asbestos-related personal injury and death claims;

expectations concerning indemnification obligations; and

statements about product or environmental liabilities.

Words such as believe, anticipate, plan, expect, intend, target, estimate, project, predict, forecast, should, continue and similar expressions are intended to identify

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forward-looking statements but are not the exclusive means of identifying such statements. Readers are cautioned not to place undue reliance on these forward-looking statements and all such forward-looking statements are qualified in their entirety by reference to the following cautionary statements.

Forward-looking statements are based on our estimates and assumptions and because forward-looking statements address future results, events and conditions, they, by their very nature, involve inherent risks and uncertainties. Such known and unknown risks, uncertainties and other factors may cause our actual results, performance or other achievements to differ materially from the anticipated results, performance or achievements expressed, projected or implied by these forward-looking statements. These factors, some of which are discussed under Risk Factors beginning on page 17, including those incorporated by reference from our Annual Report on Form 20-F filed with the US Securities and Exchange Commission, include but are not limited to: all matters relating to or arising out of the prior manufacture of products that contained asbestos by our current and former subsidiaries; required contributions to the Asbestos Injuries Compensation Fund and the effect of currency exchange rate movements on the amount recorded in our financial statements as an asbestos liability; compliance with and changes in tax laws and treatments; competition and product pricing in the markets in which we operate; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; general economic and market conditions; the supply and cost of raw materials; the success of research and development efforts; reliance on a small number of customers; a customer s inability to pay; compliance with and changes in environmental and health and safety laws; risks of conducting business internationally; compliance with and changes in laws and regulations; currency exchange risks; the concentration of our customer base on large format retail customers, distributors and dealers; the effect of natural disasters; changes in our key management personnel; inherent limitations on internal controls; use of accounting estimates; and all other risks identified in our reports filed with Australian, Dutch and US securities agencies and exchanges (as appropriate). We caution that the foregoing list of factors is not exhaustive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made and are statements of our current expectations concerning future results, events and conditions.

You should carefully review all of the information included in this Explanatory Memorandum and the Notice of Meetings, before making a decision on how to vote on Stage 1 of the Proposal to be considered at the extraordinary general meeting.

Intellectual Property

James Hardie and any logos are trademarks of James Hardie International Finance B.V., which may be registered in certain jurisdictions. Names of other companies and any other trademarks are owned by their respective owners.

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LETTER FROM THE CHAIRMEN

Dear shareholder: , 2009

For some time, your directors have indicated that James Hardie has been considering the complex issue of the domicile of James Hardie Industries N.V. In our 2008 Annual Report, we indicated that resolving this issue was a very important priority for your directors. Three primary factors have been driving this:

> We believe it is critically important that our key senior managers with global responsibilities are able to spend more time with James Hardie s operations and in its markets. Qualifying for benefits under the tax treaty between the US and The Netherlands (which we refer to as the US/Netherlands Treaty) has become increasingly costly for James Hardie since revisions to the treaty became effective in early 2006, because the revised tax treaty requires these key senior managers to spend a major portion of their time in The Netherlands.
>
> In June 2008, the US Internal Revenue Service (which we refer to as the US IRS) asserted that James Hardie did not qualify for benefits under the US/Netherlands Treaty for 2006 and 2007. While we ultimately prevailed in that dispute, the US IRS could reassert its position in respect of subsequent time periods and, accordingly, we consider it prudent to mitigate the risk of further disputes with the US IRS.
>
> Because your directors are proposing to change the company s domicile, we believe it also is efficient to transfer our intellectual property and treasury and finance operations from The Netherlands before the expiry of the favourable tax concessions the company currently enjoys in The Netherlands under the Financial Risk Reserve regime on December 31, 2010.

With these factors in mind, your directors, together with key senior managers and professional advisers, have explored a range of alternatives, including remaining in The Netherlands or moving to the US, Australia or elsewhere in Europe. Your directors determined not to pursue a move to the US or Australia due to, among other reasons, potential tax consequences, additional complexity to James Hardie s corporate structure and practical considerations due to the very high shareholder approval requirements, which are explained in greater detail in this Explanatory Memorandum. After considering potential options, your directors have concluded, for reasons explained in this Explanatory Memorandum, that it is in the best interests of James Hardie and its shareholders for James Hardie to implement a two-stage plan (which we refer to as the Proposal) to:

Stage 1: transform James Hardie to a European Company, which is a public limited company known as a *Societas Europaea* or SE; and

Stage 2: move the corporate domicile of James Hardie from The Netherlands to Ireland.

Importantly, the Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund under the Amended and Restated Final Funding Agreement. However, if a contribution is due to the Asbestos Injuries Compensation Fund in the company s 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company s contribution in that year. The capacity of the Asbestos Injuries Compensation Fund to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the Asbestos Injuries Compensation Fund, as the company s Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if the company remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Although a pending legislative proposal in The Netherlands regarding a compulsory group interest box regime was determined by the European Commission on July 8, 2009 not to violate EU law and such interest box regime may be adopted in The Netherlands, your directors believe that consummation of the Proposal is the best course of action for James Hardie and its shareholders at this time.

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Each stage of the Proposal has to be undertaken separately and requires a separate shareholder vote. If shareholders approve Stage 1 and it is implemented, a Stage 2 explanatory memorandum seeking approval for Stage 2 will be distributed in late 2009. If shareholders approve both stages, your directors anticipate that implementation of the Proposal will be completed in early 2010. It is important to implement the Proposal as soon as practicable, as there are risks and costs associated with delay.

In connection with the issue of James Hardie s domicile and in light of the expiry of the Financial Risk Reserve regime in The Netherlands on December 31, 2010, your directors also have considered the location of the company s intellectual property and treasury and finance operations. After review, your directors do not believe James Hardie will receive the full benefits of the Proposal if its intellectual property and treasury and finance operations remain in The Netherlands after the move to Ireland and, on that basis, have determined to transfer these operations to Ireland in connection with the implementation of Stage 1 of the Proposal. The transfer of the company s intellectual property in connection with the Proposal will result in tax in The Netherlands that would not be incurred if the intellectual property remained in The Netherlands. However, we believe that a transfer of the intellectual property following the expiry of the Financial Risk Reserve regime would result in greater tax in The Netherlands.

This Explanatory Memorandum sets out material information relevant to the Proposal. As there are certain risks and disadvantages involved in connection with the implementation of the Proposal, we urge all shareholders to read this document in full and consider both the benefits of the Proposal as well as the risks and disadvantages involved. For example, transaction and implementation costs of the Proposal, including taxes associated with the transfer of the company s intellectual property, are estimated as of the date of this Explanatory Memorandum to range from approximately US$51-71 million. This amount includes approximately US$30-50 million of taxes due in The Netherlands as a result of the transfer of the intellectual property in connection with Stage 1 of the Proposal. The amount of taxes actually due at the time of the transfer of the intellectual property and the company s exit from the Financial Risk Reserve regime in The Netherlands will depend on a number of factors, including the fair market value of the intellectual property at the time of its transfer and our tax bases in the intellectual property, income earned in the company s Financial Risk Reserve account, changes in currency exchange rates and the availability of offsets to the amounts in this account to finance capital and other qualifying expenditures.

KEY BENEFITS

Following a multi-year review of various alternatives, your directors have concluded that the transformation to a European Company and the move to Ireland and a transfer of our intellectual property and treasury and finance operations in connection with the transformation to a European Company is the best course of action at this time and is in the best interests of James Hardie and its shareholders because it:

- allows key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;

- provides greater certainty for James Hardie to obtain benefits under the tax treaty between the US and Ireland than is the case under the US/Netherlands Treaty;

- increases our flexibility to undertake certain transactions under Irish company law, which your directors believe expands the company s future strategic options;

- simplifies the company s governance structure to a single board of directors;

makes the company s intellectual property and treasury and finance operations eligible for a statutory tax rate that is currently lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime and, based on current Irish law and the company s current capital structure, should result in lower tax payments in respect of the intellectual property, treasury and finance operations on a combined basis than would be the case if these operations remained in The Netherlands even if the currently proposed compulsory group interest box regime is adopted in The Netherlands; and

permits most shareholders to be eligible to receive dividends not subject to withholding tax.

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SUMMARY

While the costs associated with implementation of the Proposal and the related transfer of the company s intellectual property and treasury and finance operations are not insignificant, your directors are of the view that the Proposal is the best course of action at this time for James Hardie and its shareholders and, accordingly, unanimously recommend that shareholders vote in favour of the Proposal.

This Explanatory Memorandum includes a Notice of Meetings for Stage 1 of the Proposal. Each director intends to vote his or her shareholding in James Hardie in favour of Stage 1.

If Stage 1 is approved and implemented, we will write to you again with the formal proposal to proceed with Stage 2. Each stage needs to be approved by shareholders if the expected benefits of the Proposal are to be realised.

Sincerely,

Michael Hammes Chairman Supervisory and Joint Boards	Louis Gries Chief Executive Officer and Chairman Managing Board

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INDICATIVE TIMETABLE

The key dates for consideration and implementation of the Proposal are shown below. All times referred to are Australian Eastern Standard Time (which we refer to as AEST) unless otherwise stated.

EVENT	DATE
STAGE 1 OF THE PROPOSAL	
ADR record date for voting at the extraordinary general meeting	Thursday on July 9, 2009 at 5:00 p.m. EDT
CUFS record date for voting at the extraordinary general meeting	Monday on August 17, 2009 at 5:00 p.m.
Extraordinary information meeting of JHI NV in Australia	Tuesday on August 18, 2009 at 11:30 a.m.
Deadline for submission of Direction Forms for extraordinary general meeting	No later than 4:00 p.m. on August 18, 2009
Deadline for submission of Proxy Forms for extraordinary general meeting	No later than 5:00 p.m. on August 18, 2009
Extraordinary general meeting of JHI NV in The Netherlands	Friday on August 21, 2009 at 11:00 a.m.
Expected effective date of Stage 1 (if Stage 1 of the Proposal is approved by shareholders and all other conditions are met)	September 30, 2009

If Stage 1 of the Proposal is implemented we expect to seek approval of Stage 2. A further explanatory memorandum will be issued in relation to Stage 2 of the Proposal.

EVENT	DATE
STAGE 2 OF THE PROPOSAL	

ADR record date for voting at the extraordinary general meeting	Friday on November 27, 2009 at 5:00 p.m. EDT
CUFS record date for voting at the extraordinary general meeting	Friday on January 8, 2010 at 5:00 p.m.
Extraordinary information meeting of Dutch SE in Australia	Monday on January 11, 2010 at 11:00 a.m.
Deadline for submission of Direction Forms for extraordinary general meeting	No later than 4:00 p.m. on January 11, 2010
Deadline for submission of Proxy Forms for extraordinary general meeting	No later than 5:00 p.m. on January 11, 2010
Extraordinary general meeting of Dutch SE in The Netherlands	Wednesday on January 13, 2010 at 11:00 a.m.
Expected effective date of Stage 2 (if Stage 2 of the Proposal is approved by shareholders and all other conditions are met)	January 29, 2010

The final timetable will depend on a number of factors, some of which will be outside of our control, including various regulatory filings and approvals, as well as the completion of an employee consultation process with respect to each stage of the Proposal and other corporate restructuring steps (see Key Steps in Connection with the Proposal in Section 1.2).

Any material changes to the above timetable will be announced to the Australian Securities Exchange (which we refer to as the ASX), furnished to the US Securities and Exchange Commission on a Form 6-K and made available on the James Hardie Investor Relations website (www.jameshardie.com, select James Hardie Investor Relations).

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QUESTIONS AND ANSWERS ABOUT THE PROPOSAL

The following are some of the questions that you, as a shareholder, may have regarding the Proposal and answers to those questions. This section highlights selected information from this Explanatory Memorandum and the Notice of Meetings, but does not contain all of the information that may be important to you. Section numbers in parentheses following certain of the questions in this part refer to some of the other places in this Explanatory Memorandum or the Notice of Meetings that contain more detailed information regarding the subject matter discussed.

Q1: What is the Proposal? (Section 1)

A: The Proposal is to transform the company from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) in a two-stage transaction, which ultimately will result in the relocation of our corporate domicile from The Netherlands to Ireland.

Q2: When and where is the shareholders meeting? (Section 20)

A: The extraordinary general meeting to consider Stage 1 of the Proposal will be held at the company s offices Atrium , 8th floor, Stawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands at 11:00 a.m. Central Europe Time on August 21, 2009.

An extraordinary information meeting also will be held to enable CUFS holders to attend a meeting in Australia to review Stage 1 of the Proposal and the resolution that is to be considered and voted on at the extraordinary general meeting in The Netherlands. The extraordinary information meeting will be held prior to the extraordinary general meeting at The Auditorium, the Mint, 10 Macquarie Street, Sydney, NSW, Australia at 11:30 a.m. (AEST) on August 18, 2009. A live webcast of the extraordinary information meeting will be available on our website.

Please refer to the Notice of Meetings included in this Explanatory Memorandum for details.

Q3: Who can vote at the shareholders meeting? (Section 21)

A: In order to be eligible to vote on Stage 1, you must be the registered owner or holder (as applicable) of: CUFS at 5:00 p.m. (AEST) on August 17, 2009; ADRs at 5:00 p.m. (US Eastern Daylight Saving Time) on July 9, 2009; or shares at 5:00 p.m. (AEST) on August 17, 2009.

Q4: What is the proposal that shareholders will be asked to consider and vote on at the extraordinary general meeting in connection with Stage 1 of the Proposal? (Section 20)

A The shareholders will be asked to consider and vote on the transformation of the company from a Dutch NV company to a Dutch SE company, including the following specific approvals:

JHI NV implement Stage 1, as a result of which JHI NV will adopt the form of a Societas Europaea, governed by Dutch law;

JHI NV s articles of association be amended as described in the Explanatory Memorandum, including changing the name of JHI NV from James Hardie Industries N.V. to James Hardie Industries SE;

any member of the Managing Board or any partner of our Dutch legal advisor, Loyens & Loeff NV, be authorised to apply for the required ministerial declaration of no-objection of the Dutch Ministry of Justice in connection with the amendments to the articles of association and to execute the notarial deed of amendments to the articles of association;

the execution of any deed, agreement or other document contemplated by Stage 1 as described in the Explanatory Memorandum, or which is necessary or desirable to give effect to Stage 1;

any member of the Managing Board be appointed to represent JHI NV in accordance with the articles of association in all matters concerning Stage 1; and

that the actions of one or more members of the Joint or Managing Boards relating to Stage 1 up to the date of the extraordinary general meeting be ratified and approved.

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Q5: What do I need to do now? (Section 21)

A: After carefully reading and considering the information contained in this Explanatory Memorandum, please follow the instructions for voting the CUFS, ADSs or CUFS converted to shares that you hold, which are described in the Notice of Meetings included herein under Information on Voting in Section 21. The manner by which you vote is determined by whether you hold CUFS, ADSs or CUFS you have converted to shares. Although voting is not compulsory, your vote is important and your directors encourage you to vote on the Proposal.

Q6: What is an SE? (Section 4.2)

A: An SE is a legal form of a public limited company recognised in the European Union (which we refer to as the EU) member states, which can be registered in any of those member states. The corporate domicile of an SE can be transferred after shareholder approval to any other EU member state that has implemented the Council Regulation (EC) No 2157/2001 on the Statute for a European Company (which we refer to as the SE Regulation).

Under the SE Regulation, our transformation to an SE will not affect our continuity as a legal person; we continue with the same assets, liabilities, rights and obligations both before and after our transformation to an SE and following the transfer of our corporate domicile to Ireland.

A number of enterprises have become SEs in recent years, including Porsche, Allianz, BASF and Swiss RE International.

Q7: Why is James Hardie undertaking the Proposal now? (Section 3.1)

A: Your directors consider this to be an appropriate time for James Hardie and its shareholders to implement the Proposal notwithstanding the current market environment for James Hardie and the global financial and liquidity crisis, as implementation of the Proposal will enable us to:

provide key senior management with global responsibilities more opportunities to work directly with our local operations and in our markets. Our business in the US has been adversely affected by the decline in the US housing market and the turmoil within financial and mortgage lending institutions. These challenges make it even more costly to maintain substantial management presence in The Netherlands, away from our major operations and markets;

provide more certainty regarding our ability to obtain benefits under the tax treaty between the US and Ireland (which we refer to as the US/Ireland Treaty) than is the case under the US/Netherlands Treaty; and

put in place alternative arrangements in light of the pending expiry of the Financial Risk Reserve regime in The Netherlands on December 31, 2010.

Q8: Why is James Hardie not moving the parent company to the US? (Section 3.5)

A: We considered a range of options for moving the parent company to the US, including: (1) having a new US parent company acquire all of our shares from shareholders in exchange for shares issued by the new US parent company and (2) by way of a dual incorporation structure under Delaware corporate law and Dutch company law.

Having a new US parent company acquire all of our shares would result in the new US parent company becoming our holding company. This option was considered impractical because unless the new US parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly listed: a US parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital needs to be acquired in order to effect a compulsory acquisition of the remaining shares.

We also considered a move of the parent company to the US by way of a dual incorporation structure under Delaware corporate law and Dutch company law, which would require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented. However, the structure resulting from this dual incorporation was determined to be too

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complex, and it is unclear whether this structure would be fully recognised under Dutch law. In addition, without a ruling from the Australian Taxation Office, it was uncertain whether this transaction would have resulted in an income tax liability for some Australian tax resident shareholders.

Q9: Why is James Hardie not moving the parent company to Australia? (Section 3.5)

A: We considered moving the parent company to Australia by having a new Australian parent company acquire all of our shares from shareholders in exchange for shares issued by the new Australian parent company. Such a transaction would result in the new Australian parent company becoming our holding company.

This option was considered to be not as attractive as the Proposal because:

as would be the case with a proposed move of the parent company to the US, unless the new Australian parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly listed: an Australian parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital needs to be acquired in order to effect a compulsory acquisition of the remaining shares;

moving our corporate domicile to Australia by other means was not considered possible under Dutch company law without a potential tax cost to some shareholders; and

if our tax residence was moved to Australia (and not our corporate domicile), dividends paid to shareholders would continue to be subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be offset by our shareholders).

Q10: What is the impact of the Proposal on our asbestos funding arrangements with Asbestos Injuries Compensation Fund? (Section 3.2)

A: The Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund (which we refer to as the AICF) under the Amended and Restated Final Funding Agreement (which we refer to as the AFFA). However, if a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company s contribution. The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the AICF, as James Hardie s Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if we remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Q11: Why have the directors not made a recommendation in respect of Stage 2 at this time?

A: Your directors are not able to make a recommendation in respect of Stage 2 at this time because the SE Regulation requires that the approval of the proposed relocation of the corporate domicile of Dutch SE be approved by the directors and shareholders of Dutch SE. Because we will not become Dutch SE until Stage 1 has been implemented, your directors, in their capacity as directors of Dutch NV, cannot recommend, and Dutch SE cannot approve, Stage 2 of the Proposal at this time.

If Stage 1 is approved and implemented and we transform to Dutch SE, your directors will write to you again with the formal proposal to proceed with Stage 2.

Q12: What will happen if I abstain from voting? (Section 21)

A: Any CUFS, ADSs and CUFS you have converted to shares for which no votes are cast effectively will be treated as null votes and will not count toward the voting outcome.

Q13: When do you expect the Proposal to be completed?

A: If shareholders approve both stages, your directors anticipate that the Proposal will be implemented in early 2010.

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Q14: What happens to James Hardie if Stage 1 of the Proposal is approved but Stage 2 of the Proposal does not proceed? (Section 3.4)

A: If Stage 1 of the Proposal is approved, but Stage 2 of the Proposal does not proceed, Dutch SE will continue as a European Company with its corporate domicile remaining in The Netherlands. In that circumstance, while remaining a Dutch incorporated company, Dutch SE will be able to move its corporate domicile to Ireland (or any other EU member state that has implemented the SE Regulation) at a later date if shareholders approve such a move in the future.

If Stage 2 is not implemented, none of the other favourable aspects of the Proposal will be obtained and the risks and disadvantages of staying in The Netherlands described in this Explanatory Memorandum will continue to apply. In the event we have transferred our intellectual property and our treasury and finance operations from The Netherlands in connection with the implementation of Stage 1 of the Proposal, based on current estimates and subject to the limitations of this estimate described elsewhere in this Explanatory Memorandum, we will have incurred US$30-50 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands. However, we believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal will result in additional Dutch Tax, as will a future transfer of our intellectual property after the expiry on December 31, 2010 of the Financial Risk Reserve regime. See Financial and Accounting Impact in Section 1.3.

We may determine, subject to any required consents from our lenders, to transfer our intellectual property and treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. These transfers do not require shareholder approval. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including any tax due from the transfer of our intellectual property from The Netherlands.

Q15: What matters will be considered at the annual general meeting immediately following the extraordinary general meeting?

A: At the annual general meeting, shareholders will be asked to consider, among other things, resolutions relating to our annual accounts for our 2009 financial year, our remuneration report for our 2009 financial year, re-election of five directors offering themselves for re-election, amendments to the James Hardie Industries N.V. Long Term Incentive Plan 2006 (which we refer to as our Long Term Incentive Plan), grants of equity securities to our Managing Board directors and other procedural matters.

Please refer to the separate notice of meetings for the annual general meeting and annual information meeting delivered to you together with this Explanatory Memorandum for details and the full text of the resolutions to be considered at the annual general meeting. If you have not received a copy of the notice of meetings for the annual general meeting, please see Where You Can Find Additional Information in Section 13 to request a copy.

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Q16: Who can answer questions I might have about the Proposal? (Section 13)

A: If you have additional questions about this Explanatory Memorandum, the Notice of Meetings, the meetings or the Proposal, you may submit these in advance of the extraordinary information meeting and the extraordinary general meeting. You also may ask questions relating to the Proposal at these meetings, without submitting those questions in advance. You also may contact us at:

James Hardie Industries N.V.
Atrium, 8th floor
Strawinskylaan 3077
1077 ZX Amsterdam, The Netherlands
Attention: Company Secretary
E-mail: infoline@jameshardie.com

or by calling the Information Helpline in Australia at 1800 675 021 (between 8:00 a.m. and 5:00 p.m. (AEST)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (Central Time)). You also may obtain additional information about us from documents filed or furnished with the Australian Securities Exchange and the US Securities and Exchange Commission by following instructions in the section entitled Where You Can Find Additional Information in Section 13.

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SUMMARY

This summary highlights selected information from this Explanatory Memorandum and the Notice of Meetings and does not contain all of the information that may be important to you. You should read carefully the entire Explanatory Memorandum and Notice of Meetings and the additional documents referred to in this Explanatory Memorandum and the Notice of Meetings to fully understand the Proposal and resolution that shareholders will be asked to consider at the extraordinary general meeting. You also should read the notice of meetings for the annual general meeting that will be held immediately following the extraordinary general meeting. We have included references to other parts of this Explanatory Memorandum to direct you to a more complete description of the topics presented in this summary.

James Hardie (see Section 2.5.1)

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In financial year 2008, we generated net sales in excess of US$1.4 billion. The majority of our building materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of June 30, 2009, we employed 2,356 people worldwide, the majority of whom 1,464 were located in the US.

In connection with the Proposal, we have formed JHCBM plc (which we refer to as Irish plc Subsidiary) as a subsidiary incorporated in Ireland with registered number 471542. Irish plc Subsidiary has no significant assets, has the minimum statutory capitalisation of 40,000 and has not engaged in any business or other activities other than in connection with its formation and the Proposal. As part of Stage 1, Irish plc Subsidiary will merge with and into us to form Dutch SE, after which Irish plc Subsidiary will cease to exist.

Our principal executive offices and telephone number are: Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands, Telephone: +31 20 301 2980. The principal executive offices and telephone number of Irish plc Subsidiary are: Arthur Cox Building, Earlsfort Terrace, Dublin 2, Ireland, Telephone: +35 31 618 0000.

The Proposal (see Section 1)

The Proposal is to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) and ultimately the relocation of our corporate domicile from The Netherlands to Ireland.

The Proposal is to be undertaken in two stages, as follows:

> **Stage 1:** We will transform to a European Company (*Societas Europaea* (SE)) by merging with a newly-formed subsidiary. We will become Dutch SE, with our corporate domicile remaining in The Netherlands.

In connection with the implementation of Stage 1 of the Proposal, we currently intend to transfer our intellectual property to a newly-formed subsidiary with its tax residence in Ireland and to transfer our treasury and finance operations to a newly-formed Irish subsidiary. We believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal would result in the incurrence of additional Dutch tax in the event of a future transfer of our intellectual property. However, as the transfer of our intellectual property and our treasury and finance operations from The Netherlands does not require shareholder approval, we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our treasury and finance operations from

The Netherlands independent of either stage being approved by shareholders and implemented. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due from the transfer of our intellectual property from The Netherlands.

Stage 2: Following implementation of Stage 1, Dutch SE will move its corporate domicile to Ireland to become Irish SE.

In connection with Stage 2, the registered office and head office of Dutch SE will move from The Netherlands to Ireland.

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See Financial and Accounting Impact in Section 1.3 for further information regarding Dutch tax costs in connection with the transfer of our intellectual property and our exit from the Financial Risk Reserve regime.

The Proposal is shown in the following simplified diagrams:

Reasons for the Proposal and Related Matters (see Section 3.1)

Following a multi-year review of various alternatives, your directors have concluded that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders because it:

- allows key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;
- provides greater certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty;
- increases our flexibility to undertake certain transactions under Irish company law, which your directors believe expands our future strategic options;
- simplifies our governance structure to a single board of directors;
- makes our intellectual property and treasury and finance operations eligible for a statutory tax rate that is currently lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime and, based on current Irish law and the company s current capital structure, should result in lower tax payments in respect of the intellectual property, treasury and finance operations on a combined basis than would be the case if these operations remained in The Netherlands even if the currently proposed compulsory group interest box regime is adopted in The Netherlands; and
- permits most shareholders to be eligible to receive dividends not subject to withholding tax.

Required Shareholder Approvals (see Section 1.8)

At the extraordinary general meeting on August 21, 2009, you will be asked to approve Stage 1 of the Proposal, which is our transformation to a European Company domiciled in The Netherlands through a merger with our newly-formed Irish subsidiary, Irish plc Subsidiary.

Stage 1 of the Proposal will require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented.

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If Stage 1 of the Proposal is approved and implemented, shareholders of Dutch SE will be asked at a subsequent general meeting to approve Stage 2 of the Proposal, which is the transformation of Dutch SE to Irish SE through the relocation of the corporate domicile of Dutch SE from The Netherlands to Ireland. Stage 2 of the Proposal will require the approval of 662/3% of shareholder votes cast at a properly held meeting at which at least 5% of Dutch SE s issued share capital is present or represented.

Recommendation of Your Directors (see Section 21)

Your directors believe that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders. Your directors unanimously recommend that you vote in favour of Stage 1 of the Proposal. Each director intends to vote his or her own shareholding in favour of Stage 1.

Holdings by our Directors and Officers of Shares, CUFS and ADSs (see Section 10.1.2)

As of June 30, 2009, your directors and executive officers and their affiliates held 222,422 (or about 0.051%) of our then outstanding CUFS and 3,800 of our then outstanding ADSs (or less than 0.93%). As of June 30, 2009, all directors, executive officers and their affiliates as a group, held an aggregate of 0.055% of the outstanding shares entitled to vote at the extraordinary general meeting.

Rights of Shareholders (see Sections 4.2, 5.4 and 5.6)

From a shareholder perspective, little will change in practical terms following implementation of Stage 1, except that our three-tiered board will change to a two-tiered board, the required shareholder approval threshold for Stage 2 of the Proposal will be reduced from 75% to 662/3% and the chief executive officer will not be entitled to hold office as a director for a continuous period in excess of six years without standing for re-election. Other minor changes will result from Dutch SE being subject to the SE Regulation, in addition to Dutch company law.

As part of implementation of Stage 2, Irish SE will adopt a form of memorandum and articles of association consistent with Irish company law and the SE Regulation and the rights of shareholders will undergo more substantial changes than in Stage 1. In addition, the Irish takeover regime will apply to Irish SE. The most significant of the changes in Stage 2 include:

- a change from a two-tiered board to a single-tiered board;
- holders of 5% of Irish SE s issued share capital, as compared to 1% of Dutch SE s issued share capital or holders of Dutch SE shares representing at least EUR 50 million in value, having the right, subject to complying with specified time periods and providing specified information, to request that the board place a matter on the agenda of an annual general meeting;
- holders of 10% of Irish SE s issued share capital, as compared to any shareholder of Dutch SE, having the right, subject to complying with specified time periods and providing specified information, to nominate candidates for election as directors at an extraordinary general meeting;
- holders of 5% of Irish SE s issued share capital, as compared to either 5% of Dutch SE s issued share capital or at least 100 shareholders of Dutch SE, having the right, subject to complying with specified time periods and providing specified information, to request the board to call an extraordinary general meeting and place items (other than the nomination of directors) on the agenda for such meeting;

a takeover offer will, in general, be required of a person who acquires 30% or more of the voting rights of Irish SE, as compared to 20% of the voting rights of Dutch SE; and

a person who acquires 80% or more of Irish SE s issued share capital, as compared to 95% of Dutch SE s issued share capital, can compel the acquisition of the remaining outstanding issued share capital.

We encourage you to read Summary of Key Differences Between Dutch NV and Dutch SE in Section 4.2, Summary of Key Corporate Law Differences Between Dutch SE and Irish SE in Section 5.4 and Principal Differences Between the Takeover Regime under the Articles of Association of Dutch NV and Dutch SE and the Irish Takeover Rules in Section 5.6 for a more detailed discussion of these differences.

You will continue to hold the same number of CUFS, ADSs or CUFS you have converted to shares in Dutch SE (if Stage 1 of the Proposal is approved and implemented) and in Irish SE (if Stage 2 of the Proposal is approved and

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implemented) as you held beforehand. The current certificates and holding statements evidencing your CUFS, ADSs or CUFS converted to shares will continue to evidence the same number and kind of securities following implementation of each stage of the Proposal.

Impact on Asbestos Funding Arrangements with AICF (see Section 3.2)

The Proposal will not change the overall commitment of James Hardie to make contributions to the AICF under the AFFA. However, if a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company s contribution by an amount up to 35% of the costs associated with the Proposal.

Whether, and to what extent, the costs associated with the Proposal actually reduce any contribution due to the AICF in our 2011 financial year will ultimately depend on the amount of the contribution otherwise required to be made under the AFFA and the company s net cash provided by operating activities for financial year 2010 before taking account of these costs.

The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow. Implementation of the Proposal is expected to have medium and long-term benefits for the AICF, as James Hardie s Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if we remained domiciled in The Netherlands and the intellectual property and treasury and finance operations remained in The Netherlands after December 31, 2010 following the expiry of the Financial Risk Reserve regime.

Financial and Accounting Impact (see Section 1.3)

The Proposal and the transfer of our intellectual property and treasury and finance operations in connection with the Proposal will have the following significant financial and accounting impacts:

> Transaction and implementation costs in connection with the Proposal, including the transfer of our intellectual property and treasury and finance operations, assuming our intellectual property was transferred as of September 30, 2009 (the currently estimated date for implementation of Stage 1 of the Proposal), are estimated to range from approximately US$51-71 million, US$14 million of which already has been incurred. The costs expected to be incurred in connection with Stage 1 of the Proposal include approximately US$30-50 million in Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands. The starting point of this range was estimated using the fair market value of our intellectual property as of June 1, 2009 and our income forecasts for our Financial Risk Reserve account through September 30, 2009, but did not take into account any gains or losses as a result of changes in currency exchange rates. Due to the factors described below that affect the amount of Dutch tax actually due as a result of the transfer of our intellectual property, as well as the actual time of such transfer and our exit from the Financial Risk Reserve regime, the tax due could vary from our estimate and the amount of such variance could be material.

Under the Financial Risk Reserve regime rulings relating to our intellectual property, 28% of the gain from the transfer of our intellectual property would be subject to the statutory rate of Dutch corporate tax (currently 25.5%), which, based on the framework described in the preceding paragraph, is estimated to result in Dutch tax of US$20-24 million. The remaining 72% of the gain from the transfer of our intellectual property will be included in our Financial Risk Reserve account. The Financial Risk Reserve account may be released tax-free if and to the extent James Hardie makes qualifying capital contributions to group companies that use the cash received to finance capital and other qualifying expenditures (exempt releases).

Any balance remaining in our Financial Risk Reserve account at the time of the regime s expiry or our earlier exit is subject to tax at the statutory rate of Dutch corporate tax. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our Financial Risk Reserve regime ruling. Based on an estimated ending balance in our Financial Risk Reserve account on September 30, 2009, the amount of exempt releases (which permit amounts in the Financial Risk Reserve

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account to be released without further tax) expected to be available immediately prior to our exit from the regime and the statutory rate of Dutch corporate tax (currently 25.5%), we estimate that approximately US$10-26 million in additional Dutch tax will be due on the transfer of these operations.

The amount of Dutch tax actually due at the time of the transfer of our intellectual property and our subsequent exit from the Financial Risk Reserve regime will depend on a number of factors at that time, such as the fair market value of our intellectual property and our tax bases in the intellectual property, the income earned in and exempt releases from, our Financial Risk Reserve account, changes in currency exchange rates and the amount of exempt releases available. The amount of tax due at the time of our exit from the Financial Risk Reserve regime would increase as a result of weakening in the value of the Australian and New Zealand currencies as compared to the US dollar. The determination of the fair market value of our intellectual property is affected by, among other things, our results of operations and the state of the markets in which we sell our products. An improvement in our results of operations or an increase in the number of housing starts in the markets in which we sell our products could result in an increase in the fair market value of our intellectual property. The value of our intellectual property has fluctuated in the past and in the future may vary materially from the value we used to estimate the starting point of the range of the amount of taxes due on the transfer of our intellectual property. Additionally, the fair market value of our intellectual property could increase as a result of a strengthening in the value of the Australian and New Zealand currencies as compared to the US dollar. For example, assuming the other factors that affect the amount of Dutch tax due on the transfer of our intellectual property remained unchanged, a 10% increase in the fair market value of our intellectual property as of the date of its transfer would result in approximately US$14 million in additional Dutch tax.

The Dutch tax would not be incurred if our intellectual property remains in The Netherlands after the move of Dutch SE s domicile to Ireland. While the one-time payments relating to the transfer of our intellectual property are not insignificant, we believe leaving the intellectual property in The Netherlands would result in additional Dutch tax in the event of a future transfer of this property from The Netherlands. In addition, leaving our intellectual property in The Netherlands would not permit us to obtain all of the expected benefits of the Proposal and the connected transactions. For example, leaving the intellectual property in The Netherlands after the expiration of the Financial Risk Reserve regime, would result in a higher statutory rate of tax on royalty payments in respect of our intellectual property than would be the case in Ireland (assuming an equivalent replacement regime is not adopted in The Netherlands) and may provide less certainty as to our eligibility for a 0% withholding tax rate on royalty payments made from our subsidiaries in the US to our Dutch subsidiary which holds our intellectual property. In addition, the company believes that even if the currently proposed compulsory group interest box regime is adopted in The Netherlands, based on current Irish law and the company s current capital structure, a move to Ireland should result in lower tax payments in respect of those operations on a combined basis than would be the case if the company remained in The Netherlands.

The transfer of our intellectual property and our finance and treasury operations do not require shareholder approval and we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our finance and treasury operations from The Netherlands independent of either stage being approved by shareholders and implemented.

The remaining approximately US$21 million of costs, US$14 million of which already has been incurred, relate primarily to expenses associated with the Proposal, advisory fees and costs related to our establishment of a new head office in Ireland.

Our annual accounts will continue to be prepared under Generally Accepted Accounting Principles applicable in the US (which we refer to as US GAAP). Commencing with the first financial year end after the Proposal (including Stage 2) is completed (i.e., year ended March 31, 2010 if, as anticipated, Stage 2 is implemented prior to April 1, 2010), the annual accounts of Irish SE also will be prepared under Generally Accepted

Accounting Principles applicable in Ireland (which we refer to as Irish GAAP).

In connection with the approval of Stage 2, we intend that Dutch SE will request shareholders to approve the reclassification of a merger revaluation reserve established in connection with our 2001 reorganisation to

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maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. As a result of this reclassification, the amounts available to Irish SE for distribution as dividends and to repurchase shares will be substantially the same as for Dutch SE.

After implementation of Stage 2, Irish SE s ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined based on profits calculated under Irish GAAP. However, as a result of this reclassification, we do not believe these changes will have a material impact on Irish SE s ability to pay dividends or repurchase shares.

A more detailed explanation of the accounting and financial impact of implementing the Proposal is described under the heading Financial and Accounting Impact in Section 1.3.

Accounting Treatment of the Proposal (see Section 7)

Under US GAAP, we will account for our merger with Irish plc Subsidiary in Stage 1 of the Proposal under US GAAP accounting rules governing transactions between entities under common control, which will not have an impact on our consolidated financial statements. We will account for certain income tax payments associated with leaving The Netherlands and transferring intellectual property to Ireland in accordance with the Statement of Financial Accounting Standards No. 109, Accounting for Income Taxes and Accounting Research Bulletin No. 51, Consolidated Financial Statements.

Under US GAAP, Stage 2 of the Proposal will have no impact on our consolidated financial statements.

Regulatory Requirements (see Section 1.2)

If shareholders approve Stage 1 of the Proposal, we must apply for and receive a statement of no objection from the Dutch Ministry of Justice and confirmation of the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been fulfilled before our transformation to Dutch SE may be implemented.

We expect to obtain both of these approvals within approximately four to five weeks following shareholder approval.

Stock Exchange Listings (see Section 3.6)

After our transformation to Dutch SE, Dutch SE s securities will continue to be quoted on the ASX in the form of CUFS (with CHESS Depositary Nominees Pty Ltd. being the registered holder of the underlying shares and each CUFS representing one underlying share) and the NYSE in the form of ADSs (with The Bank of New York Mellon as the registered owner of CUFS and each ADS representing 5 CUFS/underlying shares). We intend to continue to maintain listings under the symbol JHX on both the ASX and the NYSE.

Dissenters Rights (see Section 21)

Under Dutch company law, shareholders do not have dissenters or appraisal rights in connection with the Proposal.

Material Tax Consequences for Shareholders (see Section 9)

For a detailed discussion of the material Australian, US federal, Dutch, Irish and UK tax consequences of the Proposal for our shareholders, see Material Tax Considerations of the Proposal in Section 9.

The tax consequences of the Proposal for you will depend upon the facts of your situation. You should consult your own tax advisors for a full understanding of the tax consequences of the Proposal for you.

Notice for CUFS holders entitled to an exemption

Please note that following implementation of Stage 2 of the Proposal, shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty and who do not reside in Ireland must complete and send to Irish SE a non-resident declaration form in order to avoid Irish

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dividend withholding tax (See Irish Income Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 9.4.3). If the appropriate declaration is not made, such shareholders will suffer Irish dividend withholding tax of 20% on dividends paid by Irish SE and may not be entitled to offset such tax. In this case, it would be necessary for such shareholders to apply for a refund of the withholding tax suffered directly from the Irish Revenue.

Australian resident shareholders who have not made the appropriate declaration will not be entitled to an offset for the Irish dividend withholding tax against their Australian income tax liability (See Australian Income Tax Consequences of the Proposal Dividends and Distributions from us after our transformation to Irish SE in Section 9.1.3.2) and will need to apply for a refund of the withholding tax suffered directly from the Irish Revenue.

We therefore strongly recommend that the appropriate declaration is made by all shareholders who do not reside in Ireland.

Notice for ADS holders with a registered address in the U.S.

Following implementation of Stage 2 of the Proposal, ADS holders with a registered address in the US will be entitled to an automatic exemption from Irish dividend withholding tax. This means that they will not be required to complete a non-resident declaration form in order to avoid Irish dividend withholding tax (See Irish Income Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 9.4.3).

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SUMMARY SELECTED HISTORICAL CONSOLIDATED FINANCIAL INFORMATION

The following is our summary selected consolidated financial information for each of the years in the five-year period ended March 31, 2009. The data is derived from, and should be read together with our report on Form 20-F filed on June 25, 2009, which is incorporated by reference into this Explanatory Memorandum. See Where You Can Find Additional Information in Section 13.

Historical financial data is not necessarily indicative of our future results and you should not unduly rely on it.

We prepare our consolidated financial statements in accordance with US GAAP as outlined in note 2 to our audited consolidated financial statements included in our report on Form 20-F filed on June 25, 2009.

We have not included financial information for Irish plc Subsidiary as it is a newly-formed entity and has not conducted business during any of the periods illustrated below.

JAMES HARDIE INDUSTRIES N.V.

	Fiscal Year Ended March 31,				
	2009	**2008**	**2007**	**2006**	**2005**
	In million US$ (except sales price per unit and per share data)				
Consolidated Statements of Operations Data:					
Net Sales					
USA and Europe Fibre Cement	929.3	1,170.5	1,291.2	1,246.7	974.3
Asia Pacific Fibre Cement	273.3	298.3	251.7	241.8	236.1
Total net sales	1,202.6	1,468.8	1,542.9	1,488.5	1,210.4
Operating income (loss)	173.6	(36.6)	(86.6)	(434.9)	196.2
Interest expense	(11.2)	(11.1)	(12.0)	(7.2)	(7.3)
Interest income	8.2	12.2	5.5	7.0	2.2
Other expense	(14.8)				(1.3)
Income (loss) from continuing operations before income taxes	155.8	(35.5)	(93.1)	(435.1)	189.8
Income tax (expense) benefit	(19.5)	(36.1)	243.9	(71.6)	(61.9)
Income (loss) from continuing operations	136.3	(71.6)	150.8	(506.7)	127.9
Net income (loss)	136.3	(71.6)	151.7	(506.7)	126.9
Income (loss) from continuing operations per common share basic	0.32	(0.16)	0.32	(1.10)	0.28
	0.32	(0.16)	0.33	(1.10)	0.28

Net income (loss) per common share basic					
Income (loss) from continuing operations per common share diluted	0.31	(0.16)	0.32	(1.10)	0.28
Net income (loss) per common share diluted	0.31	(0.16)	0.33	(1.10)	0.28
Dividends paid per share	0.08	0.27	0.09	0.10	0.03
Book value per share	(0.25)	(0.47)	0.55	0.20	1.36
Weighted average number of common shares outstanding					
Basic	432.3	455.0	464.6	461.7	458.9
Diluted	434.5	455.0	466.4	461.7	461.0
Consolidated Cash Flow Information:					
Net cash (used in) provided by operating activities	(45.2)	319.3	(67.1)	238.4	219.4
Net cash used in investing activities	(26.1)	(38.5)	(92.6)	(154.0)	(149.8)
Net cash provided by (used in) financing activities	25.0	(254.4)	(136.4)	118.7	(27.2)

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	Fiscal Year Ended March 31,				
	2009	2008	2007	2006	2005
	In million US$ (except sales price per unit and per share data)				
Other Data:					
Depreciation and amortization	56.4	56.5	50.7	45.3	36.3
EBITDA	230.0	19.9	(35.9)	(389.6)	232.5
Capital expenditures	26.1	38.5	92.1	162.8	153.0
Volume (million square feet)					
USA and Europe Fiber Cement	1,526.6	1,951.2	2,216.2	2,244.4	1,952.4
Asia Pacific Fiber Cement	390.6	398.2	390.8	368.3	376.9
Average sales price per unit (per thousand square feet)					
USA and Europe Fiber Cement	609	600	583	555	499
Asia Pacific Fiber Cement (A$)	879	862	842	872	846
Consolidated Balance Sheet Data:					
Net current assets	149.7	183.7	259.0	150.8	180.2
Total assets	1,898.7	2,179.9	2,128.1	1,445.4	1,088.9
Total debt	324.0	264.5	188.0	302.7	159.3
Common stock	219.2	219.7	251.8	253.2	245.8
Shareholders (deficit) equity	(108.7)	(202.6)	258.7	94.9	624.7

EBITDA represents income from continuing operations before interest income, interest expense, income taxes, other non-operating expenses, net, cumulative effect of change in accounting principle, depreciation and amortization charges. The following table presents a reconciliation of EBITDA to net cash flows (used in) provided by operating activities, as this is the most directly comparable GAAP financial measure to EBITDA for each of the periods indicated:

	Fiscal Year Ended March 31,				
	2009	2008	2007	2006	2005
	In million US$				
Net cash (used in) provided by operating activities	(45.2)	319.3	(67.1)	238.4	219.4
Adjustments to reconcile net income (loss) to net cash (used in) provided by operating activities	(3.5)	(318.9)	4.5	(789.1)	(60.8)
Change in operating assets and liabilities, net	185.0	(72.0)	214.3	44.0	(31.7)
Net income (loss)	136.3	(71.6)	151.7	(506.7)	126.9
Loss from discontinued operations					1.0
Cumulative effect of change in accounting principle			(0.9)		
Income tax expense (benefit)	19.5	36.1	(243.9)	71.6	61.9
Interest expense	11.2	11.1	12.0	7.2	7.3
Interest income	(8.2)	(12.2)	(5.5)	(7.0)	(2.2)

Other expense	14.8				1.3
Depreciation and amortization	56.4	56.5	50.7	45.3	36.3
EBITDA	230.0	19.9	(35.9)	(389.6)	232.5

EBITDA is not a measure of financial performance under US GAAP and should not be considered an alternative to, or more meaningful than, income from operations, net income or cash flows as defined by US GAAP or as a measure of profitability or liquidity. Not all companies calculate EBITDA in the same manner as we have and, accordingly, EBITDA may not be comparable with other companies. We have included information concerning EBITDA because we believe that this data is commonly used by investors to evaluate the ability of a company s earnings from its core business operations to satisfy its debt, capital expenditure and working capital requirements. To permit evaluation of this data on a consistent basis from period to period, EBITDA has been adjusted for noncash charges, as well as non-operating income and expense items.

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MARKET PRICE INFORMATION

Our securities, in the form of:

CUFS trade on the ASX; and

ADSs trade on the NYSE,

each under the symbol JHX.

Irish plc Subsidiary s shares are not publicly traded.

The following table presents the closing market prices per security for our publicly traded securities, being CUFS and ADSs in Australian dollars and US dollars, respectively:

as reported on ASX for CUFS; and

as reported on the NYSE for ADSs.

In each case, the prices quoted are given as of June 22, 2009, which was:

the last full trading day on ASX and the NYSE prior to the public announcement of the Proposal; and

the most recent practicable trading date prior to the date of this Explanatory Memorandum.

	James Hardie	
	CUFS (A$)	**ADSs (US$)**
June 22, 2009	$ 4.20	$ 16.18
July 9, 2009	$ 3.77	$ 14.50

You are urged to obtain current market prices quoted for our CUFS and ADSs before making a decision with respect to the Proposal.

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RISK FACTORS

Our most recent Annual Report on Form 20-F, which is incorporated by reference into this Explanatory Memorandum, describes a variety of risks relevant to our business and financial condition, which you are urged to read in full. The following discussion concerns key risk factors relating specifically to the Proposal.

Irish SE will be exposed to the risk of future adverse changes in Irish and US law, as well as changes in tax rates, which could materially adversely affect us, including by reducing or eliminating the anticipated benefits of the Proposal.

Upon implementation of Stage 2 of the Proposal, Irish SE will be subject to Irish law. As a result, Irish SE would be subject to the risk of future adverse changes in Irish law (including Irish company and tax law). In addition, the tax rates for which we expect Irish SE and its subsidiaries to be eligible on our transformation may be increased in the future.

Irish SE also will be subject to the risk of future adverse changes to US law, as well as changes of law in other countries in which Irish SE or its subsidiaries operate.

For example, the US Congress may take legislative action that could override tax treaties upon which we rely or could subject Irish SE or Dutch SE to US tax. A number of legislative proposals in recent years have sought to deny benefits or impose penalties on companies domiciled outside of the US that conduct substantial business in the US or whose executives with decision-making responsibility are located primarily in the US. We cannot predict the outcome of any specific legislative proposal.

Our effective tax rate may be higher in future years whether or not we implement the Proposal.

James Hardie s effective tax rate for the year ended March 31, 2009 was the result of tax expense incurred in a number of jurisdictions, principally the US, Australia, New Zealand, the Philippines and The Netherlands. The primary drivers of James Hardie s effective tax rate are the tax rates of the jurisdictions in which we operate, the level and geographic mix of pre-tax earnings, intra-group royalties, interest rates and the level of debt which give rise to interest expense on external debt and intra-group debt, the benefits derived from the Financial Risk Reserve regime in The Netherlands, extraordinary and non-core items, and the value of adjustments for timing differences and permanent differences, including the non-deductibility of certain expenses, all of which are subject to change and which could result in a material increase in our effective tax rate.

Other than the Financial Risk Reserve regime, which expires on December 31, 2010, and which may be partially replaced by the currently proposed compulsory group interest box regime, these factors will continue to drive James Hardie s effective tax rate. Whether James Hardie implements the Proposal or remains in The Netherlands, we cannot provide any assurance as to what our effective tax rate will be in the future.

Revenue rulings received from Irish and Dutch Revenue authorities are based upon facts that may not be met in the future, in which case there is a risk that the conclusions reached in the rulings will not be applicable to us, including that Irish SE will not be treated as an Irish tax resident for purposes of the US/Ireland Treaty.

In connection with the Proposal, we requested and received certain revenue rulings from Irish and Dutch Revenue authorities, which are described in further detail in this Explanatory Memorandum (see Revenue Rulings in Section 6). Revenue rulings represent advice received from taxing authorities as to the tax consequences of particular

circumstances or a transaction and are based upon the specific facts presented to the taxing authority in the ruling request. In the case of the Irish Revenue authorities ruling, the Irish Revenue authorities have the ability to review their advice when a transaction is complete and all the facts are known.

One of the rulings received from the Irish Revenue authorities confirms, among other things, that so long as Irish SE is centrally managed and controlled in Ireland, it will be a tax resident of Ireland once Stage 2 of the Proposal has been approved and implemented. The ruling received from the Dutch Revenue authorities confirms, among other things, that if the Proposal is implemented, Irish SE will be no longer subject to Dutch tax as a resident in The Netherlands (except on Dutch source income) as long as Irish SE remains an Irish tax resident. Two of the

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other Irish Revenue authorities rulings relate to the tax status in Ireland of two of our newly-formed subsidiaries to which our intellectual property and our treasury and finance operations will be transferred in connection with the Proposal.

The issue as to whether a company is centrally managed and controlled in Ireland is a question of fact directed at the highest level of control of a company s business, as distinct from day-to-day control to carry out normal business operations. Irish SE intends to establish that it is centrally managed and controlled in Ireland by, among other things, holding a majority of its board meetings in any one year in Ireland with participation of a majority of its directors in Ireland, the board deciding on corporate strategy, such as decisions relating to significant transactions and investments, capital expenditures, equity and debt raising and dividend payments in Ireland, and maintaining its head office function in Ireland. One of the rulings from the Irish Revenue authorities confirms that if Irish SE operates in this manner, Irish SE will be deemed a tax resident of Ireland.

If Irish SE fails to satisfy the requirement that it be centrally managed and controlled in Ireland because it fails to operate in the manner set out in the ruling from the Irish Revenue authorities or otherwise, it may not qualify as an Irish tax resident for the purposes of the US/Ireland Treaty. If this occurred, Irish SE would not receive some or all of the anticipated benefits under the Proposal. In such circumstances, Irish SE also could be subject to tax in another jurisdiction, including The Netherlands. Irish SE or its subsidiaries may also in the future fail to operate in a manner consistent with other facts upon which our rulings are based. In such event, the conclusions reached in the revenue rulings would no longer be applicable and we may not receive some or all of the anticipated benefits of the Proposal. See Revenue Rulings in Section 6.

The US/Ireland Treaty may be amended in the future and there is a risk that Irish SE would be unable or unwilling to make changes required to qualify for treaty benefits.

While the US/Ireland Treaty contains an article regarding limitations on benefits (which requires the relevant person claiming relief to be an Irish resident who meets one or more requirements set out in the treaty), the limitations of benefits article in the US/Ireland Treaty does not presently contain an equivalent to the substantial presence requirement included in the US/Netherlands Treaty. See The US/Netherlands Treaty and The US IRS 30-Day Letter in Sections 2.3 and 2.4, respectively, for a further description of substantial presence .

However, the US/Ireland Treaty may be amended in the future in a manner that would adversely affect Irish SE or its ability to qualify for benefits under the US/Ireland Treaty, including in a manner that would result in Irish SE and its subsidiaries not receiving some or all of the anticipated benefits of the Proposal. A risk of such an amendment to the US/Ireland Treaty arises from, among other things, the fact that the US Model Income Tax Convention of November 15, 2006, which generally serves as a basis for US tax treaty negotiations, contains an equivalent to the substantial presence requirement included in the US/Netherlands treaty.

In the event the US/Ireland Treaty were amended in a manner that would adversely affect Irish SE or its ability to qualify for benefits under the US/Ireland Treaty, including in a manner that would result in Irish SE and its subsidiaries not receiving some or all of the anticipated benefits of the Proposal, Irish SE would need to consider its available alternatives at that time.

There is a risk that the US IRS will react adversely as a result of our decision to pursue the Proposal.

Although we do not believe our decision to pursue the Proposal should increase the likelihood that the US IRS will seek to examine any tax years or portions thereof not examined prior to the move to Ireland, we cannot predict how the US IRS will react to our decision to pursue the Proposal. There can be no assurance that, as a result of the Proposal, the US IRS will not seek to examine other tax years or portions thereof. In addition, the US IRS could seek

to challenge our move to Ireland and our ability to receive benefits under the US/Ireland Treaty. However, because we expect Irish SE will be able to satisfy the requirements of the US/Ireland Treaty, we believe Irish SE will be eligible to receive the benefits under the US/Ireland Treaty.

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A final class ruling from the Australian Taxation Office seeking confirmation that no capital gain or capital loss will arise under the Australian capital gains tax provisions for Australian tax resident shareholders may not be received or a final ruling received from the Australian Taxation Office may reach a different conclusion from the draft ruling, which could result in Australian tax resident shareholders realising a capital gain or a capital loss under the Australian capital gains tax provisions as a result of the Proposal.

In connection with the Proposal, we have received advice that no capital gain or capital loss should arise under the Australian capital gains tax provisions from the Proposal for Australian tax resident shareholders that hold their shares or CUFS on capital account. However, this advice is not binding on the Australian Taxation Office, which may reach a different conclusion. In order to provide more certainty to such Australian tax resident shareholders, we have applied to the Australian Taxation Office for a class ruling confirming that no capital gain or capital loss will arise under the Australian capital gains tax provisions for these shareholders as a result of the Proposal.

A class ruling is a form of public ruling provided by the Australian Taxation Office. A public ruling is an expression of the Commissioner s opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities (e.g., our shareholders) in relation to a particular scheme or a class of schemes. If our Australian shareholders rely on a class ruling, the Commissioner must apply the law as set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages the shareholder, in which case the law may be applied to shareholders in a way that is more favourable to the shareholder, provided the Commissioner is not prevented from doing so by a time limit imposed by the law). We have received a draft ruling from the Australian Taxation Office that no capital gain or capital loss will arise under the Australian capital gains tax provisions from the Proposal for Australian tax resident shareholders that hold their shares or CUFS on capital account. We expect the Australian Taxation Office to issue a final ruling prior to implementation of Stage 1 of the Proposal. However, the draft ruling we have received is not legally binding on the Australian Taxation Office and the final ruling we receive from the Australian Taxation Office could be different, which could result in Australian tax resident shareholders realising a capital gain or capital loss under the Australian capital gains tax provisions as a result of the Proposal.

The rights of shareholders after our transformation to Irish SE will not be the same as at present.

We are a company subject to Dutch statutory rules on public limited companies. Following our transformation to Dutch SE, Dutch SE will continue to be subject to Dutch statutory rules with only minor changes to the rights of shareholders, except that our three-tiered board will change to a two-tiered board, the required shareholder approval threshold for Stage 2 of the Proposal will be reduced from 75% to 662/3% and the chief executive officer will not be entitled to hold office as a director for a continuous period in excess of six years without standing for re-election.

More significant changes to the rights of shareholders will occur upon implementation of Stage 2 of the Proposal. Irish SE will be a company registered under the laws of Ireland and the rights of holders of Irish SE securities will be governed by Irish company law and the memorandum and articles of association of Irish SE. Due to the differences between Dutch and Irish laws and the differences between our constituent documents both before and after implementing Stage 2 of the Proposal, your rights as a shareholder will change.

By way of example, as a result of the Proposal, the present takeover regime under our articles of association will no longer apply and Irish SE instead will be subject to the Irish takeover rules and the regulation of the Irish Takeover Panel.

For more information regarding these differences and the changes in the rights for shareholders see Summary of Key Differences between Dutch NV and Dutch SE in Section 4.2 and Summary of Key Corporate Law Differences Between Dutch SE and Irish SE in Section 5.4.

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In connection with the Proposal, we are required to negotiate the terms of future employee involvement in Dutch SE with a special negotiating body comprised of employees from EU member states in which James Hardie operates. These negotiations are expected to lead to the creation of an employee representative body that will have certain information and consultation rights in relation to future decisions of the boards of Dutch SE and Irish SE.

Under the SE Regulation and other relevant legislation, formation of an SE through merger requires the companies involved in the merger to enter into negotiations with a special negotiating body (which we refer to as the SNB), made up of a number of employee representatives in EU member states to come to an arrangement on future employee involvement in the SE. We commenced this process shortly before mailing this Explanatory Memorandum.

We cannot implement Stage 1 of the Proposal without coming to an arrangement on employee involvement. As a result, we may not be able to implement Stage 1 of the Proposal until approximately seven months from the date of this Explanatory Memorandum (or longer if we would agree with the SNB to extend this period), which will delay the implementation of Stage 2 of the Proposal. We expect that any such delay will result in increased costs.

Under the SE Regulation and other relevant legislation, in the event we and the SNB are unable to come to an arrangement regarding employee involvement within six months following the formation of the SNB, we and the SNB can agree to extend this period or we may accept the standard rules. In general, the standard rules require our Managing Board to inform and consult with an employee representative body (which we refer to as an ERB) on major issues affecting employees. At this time, we cannot determine the outcome of the SNB process.

In the event that the standard rules apply, Dutch SE would have to provide information to and consult with the employee representative body in connection with future decisions regarding major issues affecting employees, including the decision by the boards of Dutch SE to approve Stage 2 of the Proposal. However, the employee representative body would not have the power to block or prevent any Managing or Supervisory Board decisions or actions, including the decision to implement Stage 2 of the Proposal. While we do not anticipate any specific governance issues as a result of employee involvement in future board decisions, we have not previously been subject to these requirements and cannot determine how or whether employee involvement will affect our future governance or operations.

Changes in our board structure and the composition of our board of directors may lead to a loss of continuity of directors and adversely affect our decision-making and governance.

In connection with the implementation of Stage 2 of the Proposal, the Supervisory and Managing Boards of Dutch SE will be replaced with a single board, which we expect will consist of eight non-executive directors and one executive director of Irish SE. We expect that the majority of your directors currently serving on the Supervisory Board will continue as non-executive directors of Irish SE, with two new directors also being added to the board.

Only one of the existing six directors on our Supervisory Board whom we expect to continue as a director of Irish SE has served more than three years. The balance of the Irish SE board, other than our CEO, will be made up of directors with less than three years experience with James Hardie. We intend that any new directors nominated will have appropriate experience in business, corporate governance and the types of issues confronting James Hardie. However, the changes to our board structure and composition as a result of the implementation of the Proposal may result for a period of time in a reduction in the effectiveness of your directors and of board-level decision-making at Irish SE.

For more information about our board structure and the composition of our boards, see Corporate Governance in Section 5.3.

The actual benefits that we realise from the Proposal could be materially different from our current expectations.

The Proposal is designed to enable us to reorganise James Hardie in a manner that would, among other things, allow key senior managers with global responsibilities to be free to spend more time with management at our local operations and in our markets and provide more certainty to James Hardie regarding its future tax obligations. In

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addition, the Proposal is partly driven by the desire to increase our future flexibility by becoming subject to Irish company law. However, there can be no assurance that the ability of our key senior managers with global responsibilities to spend more time with local operations and in our markets will result in an improvement to our results of operations, that the tax laws expected to apply to Irish SE s operations will not adversely change in the future, that Irish company law will not become more restrictive or otherwise disadvantageous or that changes to our governance structure and board composition will not adversely affect us. A variety of other factors that are partially or entirely beyond our control could cause the actual benefits that we realise from the Proposal to be materially different from what we currently expect.

Our business may be adversely affected as a result of adverse action against us and negative publicity resulting from our announcement and implementation of the Proposal, including the reduction of amounts available for contributions under the AFFA resulting from the costs associated with the Proposal and the possibility of the AICF later not having sufficient funding to meet future obligations.

There is a possibility that, despite certain covenants agreed to by the New South Wales Government in the AFFA, adverse action could be directed against us by one or more of the New South Wales Government, the Government of the Commonwealth of Australia (which we refer to as the Australian Commonwealth Government), governments of the other states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups in relation to the asbestos liabilities in respect of which the AICF has been established. Such action might arise as a result of the costs of the Proposal reducing the amounts available for contribution under the AFFA in the financial year following implementation of the Proposal, particularly if the AICF does not have sufficient funding in future years to meet obligations to claimants. This risk is compounded by other factors adversely affecting our net operating cash flow, such as the difficult trading conditions we currently face in our key markets and the payments we have made, and may make in the future, to taxation authorities in respect of prior taxation years.

The Proposal also could result in increased negative publicity related to James Hardie. There continues to be negative publicity regarding, and criticism of, companies that conduct substantial business in the US but are domiciled in countries like Bermuda. We cannot assure you that we will not be subject to similar criticism based on the Proposal. We previously have been the subject of significant negative publicity in connection with the events that were considered by the Special Commission of Inquiry and the Australian Securities & Investments Commission proceedings in Australia.

We believe that any such adverse action or negative publicity could materially adversely affect our financial position, liquidity, results of operations and cash flows, employee morale and the market prices of our publicly traded securities.

We may be unable to obtain the regulatory and other approvals required to implement the Proposal or the Proposal may be challenged by governmental entities or third parties.

Implementing Stage 1 of the Proposal requires a statement of no objection from the Dutch Ministry of Justice and confirmation from the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been satisfied. We expect we will be able to obtain both of these.

In addition, as of the date of this Explanatory Memorandum we have applied for a statement of no objection from the Treasurer of Australia under Australia s Foreign Acquisitions and Takeovers Act of 1975 in respect of the transfer of our intellectual property from The Netherlands to Ireland and the indirect transfer of our Australian subsidiaries resulting from the internal reorganisation that we are undertaking in connection with the Proposal. We expect to receive the statement of no objection by the time shareholders are asked to consider and approve Stage 1 of the Proposal.

While the Proposal does not require any notice, consent or approval under the terms of the AFFA, we have, as a matter of courtesy, advised the New South Wales Government and Asbestos Injuries Compensation Fund Limited (in its capacity as trustee of the AICF). We and our subsidiary, James Hardie 117 Pty Limited, also have entered into a deed of confirmation with the New South Wales Government and Asbestos Injuries Compensation Fund Limited (the AFFA Deed of Confirmation). Among other things, we have agreed in the AFFA Deed of Confirmation that

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relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after implementation of the Proposal (the ATO Rulings). We have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office s position, our rights and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

In addition, a relevant state or foreign governmental authority could revoke, fail to provide or challenge or seek to block the Proposal, as such authority deems necessary or desirable in the public interest. Moreover, in some jurisdictions, a third party could initiate a private action challenging or seeking to enjoin the Proposal, before or after it is implemented. We cannot be sure that a challenge to the Proposal will not be made or that, if a challenge is made, our position will prevail. For a full description of the regulatory approvals required for the Proposal, see Key Steps in Connection with the Proposal in Section 1.2

Any delay in the implementation of the Proposal may significantly reduce the benefits expected to be obtained from the Proposal.

In addition to the required regulatory and other approvals, the Proposal is subject to a number of other conditions, some of which may prevent, delay or otherwise materially adversely affect its implementation. Although we expect that these conditions will be satisfied in a timely fashion, we cannot predict whether and when these other conditions will be satisfied. Any delay in implementing the Proposal may significantly reduce some or all of the expected benefits from the Proposal and/or result in material increases to the estimated transaction and implementation costs.

Stage 1 of the Proposal may be approved and implemented but Stage 2 of the Proposal may not proceed, in which event Dutch SE will not receive the anticipated benefits from the Proposal.

If Stage 1 of the Proposal is approved and implemented, but Stage 2 of the Proposal does not proceed, Dutch SE will continue as a European Company with its corporate domicile in The Netherlands, with capacity to move its corporate domicile in the future to any other EU member state (that has implemented the SE Regulation) if shareholders approve such a move.

If Stage 2 is not implemented, none of the other favourable aspects of the Proposal will be obtained and the risks and adverse consequences for Dutch SE of staying in The Netherlands will continue to apply, including the requirement for our key senior managers with global responsibilities to spend a significant amount of their time in The Netherlands and the uncertainty regarding our tax obligations as a result of the US IRS interpretation of the application of the US/Netherlands Treaty to James Hardie. In the event Stage 1 is approved and implemented and Stage 2 of the Proposal does not proceed, we will be a Dutch SE and remain exposed to the risk of future adverse changes in Dutch law and Dutch SE will have incurred significant transaction and implementation costs, as well as the diversion of management resources. In the event we have transferred our intellectual property and our treasury and finance operations from The Netherlands in connection with the implementation of Stage 1, based on estimates as of the date of this Explanatory Memorandum, we will have incurred US$30-50 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands.

More information regarding the costs associated with the Proposal and the costs associated with the transfer of our intellectual property and treasury and finance operations is described under the heading Financial and Accounting Impact in Section 1.3.

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Implementation of the Proposal and relocation of Dutch SE s corporate headquarters from The Netherlands to Ireland might be disruptive.

Implementing the Proposal could divert our management resources from other transactions or activities that we may otherwise desire to undertake. Diversion of management attention from such activities could adversely affect our ongoing operations and business relationships. These diversions may prevent us from pursuing attractive business opportunities that may arise prior to implementing the Proposal.

In addition, relocating Dutch SE s head office from The Netherlands to Ireland upon implementation of Stage 2 of the Proposal could result in the loss of personnel. Terminating or replacing such personnel could be costly and have a negative impact on the continuity and progress of our business, including our operating results.

We will be exposed to future regulatory risks relating to changes affecting European Companies.

We will be subject to regulatory initiatives of the EU regarding European Companies and the SE Regulation. Changes in the EU, the SE Regulation or the EU directives affecting SEs may affect the overall benefits anticipated as a result of implementing the Proposal. Any of these changes could have a material adverse effect on our business, including our results of operations.

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RECENT DEVELOPMENTS

Remuneration of Managing Board and Senior Executives

On June 22, 2009, the Supervisory Board approved a number of changes to remuneration arrangements for the Managing Board and senior executives for fiscal year 2010. JHI NV will seek shareholder approval for the changes at the 2009 annual general meeting on August 21, 2009, which will be held immediately following the Extraordinary General Meeting.

The key adjustments to the remuneration framework in fiscal year 2010 are:

For long-term incentive grants under the JHINV Long Term Incentive Plan 2006 (which we refer to as the LTIP), having 70% of the LTI Target quantum vesting subject to negative discretion based on a number of quantitative performance criteria which will be approved by shareholders (which we refer to as the Scorecard). The remaining 30% of LTI Target quantum will continue to be granted under the LTIP based on relative total shareholder return with no negative discretion applicable.

Re-allocating 40% of LTI Target quantum temporarily to the STI Target quantum under the Executive Incentive Program and the LTIP, to be granted as restricted stock and vesting subject to performance against the Scorecard.

Paying the remaining 30% of LTI Target in cash under the LTIP based on changes in the value of the company s stock and vesting subject to performance against the Scorecard.

Indexing the EBIT goal under the Executive Incentive Program for changes to housing starts in Asia Pacific as well as the current indexing for the US business.

Paying all STI Target payments under the LTIP in a mixture of shares and restricted stock rather than cash.

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1. THE PROPOSAL

1.1. Summary of Terms of the Proposal

The Proposal is to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)), and ultimately the relocation of our corporate domicile from The Netherlands to Ireland.

The Proposal is to be undertaken in two stages, as follows:

> **Stage 1:** We will transform to a European Company (*Societas Europaea* (SE)) by merging with a newly-formed subsidiary. We will become Dutch SE, with our corporate domicile remaining in The Netherlands.

In connection with the implementation of Stage 1 of the Proposal, we currently intend to transfer our intellectual property to a newly-formed subsidiary tax resident in Ireland and to transfer our treasury and finance operations to a newly-formed Irish subsidiary. We believe leaving the intellectual property in The Netherlands until the implementation of Stage 2 of the Proposal would result in the incurrence of additional Dutch tax on a future transfer of the intellectual property from The Netherlands. However, as the transfer of our intellectual property and our treasury and finance operations from The Netherlands does not require shareholder approval, we may determine, subject to any required consents from our lenders, to transfer our intellectual property and our treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and would require the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due from the transfer of our intellectual property from The Netherlands.

> **Stage 2:** Following implementation of Stage 1, Dutch SE will move its corporate domicile to Ireland to become Irish SE.

In connection with Stage 2, the registered office and head office of Dutch SE will move from The Netherlands to Ireland.

See Financial and Accounting Impact in Section 1.3 for further information regarding costs associated with the Proposal and the costs associated with the transfer of our intellectual property and our treasury and finance operations.

1.2. Key Steps in Connection with the Proposal

1.2.1. Stage 1

The following key steps already have been undertaken with respect to the Proposal:

approval by your directors of Stage 1;

execution of the terms of merger and the filing thereof with the Dutch Trade Register;

initiation of the SNB process;

receipt of rulings from the Irish and Dutch Revenue authorities confirming certain Irish and Dutch tax matters relating to the Proposal;

application for a statement of no objection from the Treasurer of Australia in relation to the transfer of our intellectual property and the indirect transfer of our Australian subsidiaries under an Irish holding company structure;

receipt of a draft ruling from the Australian Taxation Office that no capital gain or capital loss will arise for Australian tax resident shareholders that hold their shares or CUFS on capital account;

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confirmation from the ASX that it does not object to the terms of the proposed constituent documents for Dutch SE and Irish SE;

confirmation by the New South Wales Government and Asbestos Injuries Compensation Fund Limited (as trustee of the AICF) pursuant to the AFFA Deed of Confirmation that the Proposal does not constitute an Insolvency Event, Wind-Up Event or Reconstruction Event under the AFFA or under the replacement parent guarantee, a default under the AFFA or a breach of the AFFA or any of the Related Agreements (as defined in the AFFA) by us or any other of our subsidiaries which is a party to those agreements; and

confirmation from our current lending banks that the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities and agreement with our current lending banks for the rearrangement of those facilities to enable James Hardie International Finance Limited (which we refer to as JHIF Limited), a newly-formed finance subsidiary that will operate our treasury and finance functions, to become a borrower and assume the obligations of James Hardie International Finance B.V. (which we refer to as JHIF BV) under the external finance facilities at the same time the financing and treasury operations are transferred to it.

The key remaining steps that must be satisfied to implement Stage 1 of the Proposal are:

shareholder approval for Stage 1;

completion of the SNB process;

receipt of a statement of no objection from the Dutch Ministry of Justice;

receipt of a statement of no objection from the Treasurer of Australia;

expiry of the one-month period for creditor opposition that commenced the day after publication of the terms of merger and during which period the Dutch Ministry of Justice has the authority to file objections on grounds of public order, provided that such period may restart the day after publication of any amendments to the terms of merger;

confirmation by the High Court of Ireland that all legal requirements for Stage 1 of the Proposal have been satisfied; and

the Australian Taxation Office determining the applications for rulings to replace those previously issued in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after implementation of the Proposal.

Dutch law requires the Managing Board to inform our shareholders prior to or at the extraordinary general meeting of any important changes in the circumstances that have had an impact on the terms of merger (including the explanatory notes). Once the steps above have been satisfied, Stage 1 will be effected upon execution of a deed of merger and the filing of such deed with the Dutch Trade Register, resulting in our transformation to Dutch SE with our corporate domicile continuing in The Netherlands.

The Dutch Civil Code also requires that the deed of merger be executed within six months after the announcement that the terms of merger have been filed with the Dutch Trade Register. We intend that the SNB process will be completed within that period (see Employee Representative Body in Section 4.4). If the SNB process is not completed within this

six-month period, we may seek to agree on an extension of the period of negotiations with the SNB. Such agreed extension will trigger an extension of the six-month period within which the deed of merger must be executed. In the event of such an extension, the deed of merger must then be executed within three months from the end of the extended period as agreed with the SNB.

1.2.2. Stage 2

The following steps must be satisfied before Stage 2 of the Proposal can be implemented:

approval by the directors of Dutch SE for Stage 2, which we expect will involve the provision of information to and consultation with the employee representative body that is formed in connection with Stage 1;

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expiry of a two-month period after publication of the transfer proposal relating to Stage 2 for creditor opposition to the change in corporate domicile to Ireland and satisfactory resolution of any creditor objections;

expiry of a two-month period after publication of the transfer proposal relating to Stage 2 without opposition from the Dutch Ministry of Justice based on grounds of public interest;

shareholder approval for Stage 2, including the reclassification of Dutch SE s merger revaluation reserve (see Financial and Accounting Impact in Section 1.3); and

a Dutch civil law notary issuing a certificate attesting to the completion of the acts and formalities to be accomplished before the move to Ireland and the submission of the certificate to the Companies Registration Office of Ireland, together with appropriate filing documentation.

Although we do not believe there are any regulatory approvals required to complete Stage 2 of the Proposal, Dutch law is unclear as to whether a statement of no objection of the Dutch Ministry of Justice is required. As a result, we also intend to seek a statement of no objection from the Dutch Ministry of Justice in connection with the implementation of Stage 2.

1.3. Financial and Accounting Impact

The significant financial and accounting impacts from the implementation of the Proposal and the transfer of our intellectual property and treasury and finance operations in connection with the Proposal are described below.

Transaction and implementation costs in connection with the Proposal and related transactions, consisting of the transfer of our intellectual property and treasury and finance operations, assuming our intellectual property was transferred as of September 30, 2009 (the currently estimated date for implementation of Stage 1 of the Proposal), are estimated to range from approximately US$51-71 million, US$14 million of which already has been incurred. The costs expected to be incurred in connection with Stage 1 of the Proposal include a one-time approximately US$30-50 million tax in The Netherlands as a result of a capital gain on the transfer of our intellectual property from The Netherlands. The starting point of this range was estimated using the fair market value of our intellectual property as of June 1, 2009 and our income forecasts for our Financial Risk Reserve account through September 30, 2009, but did not take into account any gains or losses as a result of changes in currency exchange rates. Due to the factors described below that affect the amount of Dutch tax actually due as a result of the transfer of our intellectual property, as well as the actual time of such transfer and our exit from the Financial Risk Reserve regime, the tax due could vary from our estimate and the amount of such variance could be material.

This estimated one-time Dutch tax cost of US$30-50 million arises from a capital gain on the transfer of our intellectual property out of The Netherlands to a newly-formed Bermuda company tax resident in Ireland in connection with Stage 1 of the Proposal. Under the Financial Risk Reserve regime rulings relating to our intellectual property, 28% of this gain would be subject to the statutory rate of Dutch corporate tax (currently 25.5%), which is estimated to result in Dutch tax of US$20-24 million. The remaining 72% of the gain will be included in our Financial Risk Reserve account. The Financial Risk Reserve account may be released tax-free if and to the extent that James Hardie makes qualifying capital contributions to group companies that use the cash received to finance capital and other qualifying expenditures (exempt releases).

Any balance remaining in our Financial Risk Reserve account at the time of the regime s expiry or our earlier exit is subject to tax at the statutory rate of Dutch corporate tax. The transfer of our treasury and finance operations from The Netherlands would result in the early termination of our Financial Risk Reserve regime ruling. Based on an estimated

ending balance in our Financial Risk Reserve account on September 30, 2009, the amount of exempt releases expected to be available immediately prior to our exit from the regime and the statutory rate of Dutch corporate tax (currently 25.5%), we estimate that approximately US$10-26 million in additional Dutch tax will be due on the transfer of these operations. However, the starting point of this range may be as low as zero if we prevail

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on certain Dutch tax positions we have taken or plan to take in our Dutch tax returns for which we have not recorded a tax benefit in our consolidated financial statements.

The amount of Dutch tax actually due at the time of the transfer of our intellectual property and our subsequent exit from the Financial Risk Reserve regime will depend on a number of factors at that time, such as fair market value of our intellectual property and our tax bases in the intellectual property, other income earned and exempt releases up to that date in our Financial Risk Reserve account, changes in currency exchange rates and the amount of exempt releases available. The amount of tax due at the time of our exit from the Financial Risk Reserve regime would increase as a result of a weakening in the value of the Australian and New Zealand currencies as compared to the US dollar. The determination of the fair market value of our intellectual property is affected by, among other things, our results of operations and the state of the markets in which we sell our products. An improvement in our results of operations or an increase in the number of housing starts in the markets in which we sell our products could result in an increase in the fair market value of our intellectual property. The value of our intellectual property has fluctuated in the past and in the future may vary materially from the value we used to estimate the starting point of the range of the amount of taxes due on the transfer of our intellectual property. Additionally, the fair market value of our intellectual property could increase as a result of any strengthening in the value of the Australian and New Zealand currencies as compared to the US dollar. For example, assuming the other factors that affect the amount of Dutch tax due on the transfer of our intellectual property remained unchanged, a 10% increase in the fair market value of our intellectual property as of the date of its transfer would result in approximately US$14 million in additional Dutch tax.

This Dutch tax would not be incurred if our intellectual property remained in The Netherlands after the move of Dutch SE s domicile to Ireland. While the one-time payments relating to the transfer of our intellectual property are not insignificant, we believe leaving the intellectual property in The Netherlands would result in the incurrence of additional Dutch tax in the event of a future transfer of this property from The Netherlands. In addition, leaving our intellectual property in The Netherlands would not permit us to obtain all of the expected benefits of the Proposal. The transfer of our treasury and finance operations will permit interest income from our finance operations to be eligible for a lower statutory rate of tax in Ireland than would be applicable in The Netherlands following expiry of the Financial Risk Reserve regime on December 31, 2010. For example, leaving the intellectual property in The Netherlands after the expiration of the Financial Risk Reserve regime, would result in a higher statutory rate of tax on royalty payments in respect of our intellectual property than would be the case in Ireland (assuming an equivalent replacement regime is not adopted in The Netherlands) and may provide less certainty as to our eligibility for a 0% withholding tax rate on royalty payments made from our subsidiaries in the US to our Dutch subsidiary which holds our intellectual property. In addition, the company believes that even if the currently proposed compulsory group interest box regime is adopted in The Netherlands, based on current Irish law and the company s current capital structure, a move to Ireland should result in lower tax payments in respect of those intellectual property, treasury and finance operations on a combined basis than would be the case if the company remained in The Netherlands. (See The Netherlands Financial Risk Reserve Regime in Section 2.2.).

As previously described, the transfer of our intellectual property and treasury and finance operations does not require shareholder approval and we may determine, subject to any required consents from our lenders, to complete these transfers independent of either stage being approved by shareholders and implemented.

The remaining approximately US$21 million of costs, US$14 million of which already has been incurred, relate primarily to expenses associated with the Proposal, advisory fees and costs related to our establishment of a new head office in Ireland.

Our annual accounts will continue to be prepared under US GAAP. Commencing with the first financial year end after the Proposal (including Stage 2) is completed (i.e., year ended March 31, 2010 if Stage 2 is implemented prior to April 1, 2010), the annual accounts of Irish SE also will be prepared under Irish GAAP.

In connection with our 2001 reorganisation (See The 2001 and 2003 Reorganisations in Section 2.1), a negative merger revaluation reserve was recorded in the company s financial statements in order to maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. Under Dutch and Irish company law, the merger revaluation reserve is included in the calculation of amounts available for distribution to shareholders. In The Netherlands, the share premium reserve also is included in such calculation.

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In Ireland, share premium reserve is not included in such calculation, which would result in a material reduction in the amount available for distribution to shareholders following Dutch SE s transformation to Irish SE in Stage 2.

As part of shareholder approval for Stage 2, shareholders of Dutch SE will be asked to approve the reclassification of the merger revaluation reserve to share premium reserve and retained earnings, which will eliminate this merger revaluation reserve. After implementation of Stage 2, our ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined based on our profits calculated under Irish GAAP. However, as a result of this reclassification, we do not believe these changes will have a material impact on our ability to pay dividends or repurchase shares.

1.4. Our Transformation to Dutch SE (Stage 1)

To effect our transformation to Dutch SE, we have entered into the terms of merger with our newly-formed subsidiary, Irish plc Subsidiary. Under the SE Regulation, effecting a merger with a company in another EU member state is the only currently available option to the company to achieve the proposed transformation to Dutch SE. Other options available under the SE Regulation, such as a direct conversion of the company into Dutch SE or the formation of a new holding company, require that the company has had a subsidiary governed by the legislation of another EU member state for at least two years prior to the implementation of Stage 1 of the Proposal, which will not be the case for the company at the time of the anticipated implementation of Stage 1 of the Proposal.

As a result of the merger, we will continue as the surviving entity, assuming all of the assets and liabilities of Irish plc Subsidiary by operation of law. Upon completion of the merger, our articles of association will be amended to comply with the SE Regulation and we will become Dutch SE.

Our transformation to Dutch SE following the merger will involve a change of corporate form only, with Dutch SE having the same assets and liabilities both before and after the transformation. We will need to change details of our registration in The Netherlands to reflect our change of corporate form to Dutch SE.

1.5. Summary of Terms of Merger

On June 23, 2009, we and Irish plc Subsidiary entered into the terms of merger pursuant to which Irish plc Subsidiary will merge with and into us and we will become Dutch SE. We recommend that you read carefully the terms of merger including the explanatory notes for the complete terms of the merger and other important information. The terms of merger, including the explanatory notes (but without annexes), are attached to this Explanatory Memorandum as Annex A and are incorporated by reference.

The material provisions of the terms of merger are as follows:

- we will, by operation of law, acquire the nominal assets and liabilities of Irish plc Subsidiary under a universal title of succession;
- Irish plc Subsidiary s six nominee shareholders, who collectively hold six shares in Irish plc Subsidiary (which represents all of the outstanding issued share capital of Irish plc Subsidiary not held by us), will each receive one share in Dutch SE in exchange for the one share each of them holds in Irish plc Subsidiary;
- the articles of association of Dutch SE will be amended; and
- our existing Managing and Supervisory Boards will continue as the Managing and Supervisory Boards of Dutch SE but our Joint Board will be eliminated.

There are no contractual conditions precedent to the merger. However, the merger will only become effective upon the execution of the deed of merger and the filing of such deed with the Dutch Trade Register following (a) the receipt by the parties of a statement of no objection from the Dutch Ministry of Justice, (b) a certificate of compliance from the High Court of Ireland and (c) the registration of the merger in the Dutch Trade Register, which is subject to the presentation of an arrangement on employee involvement. (See Employee Representative Body in Section 4.4.)

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1.6. Corporate Domicile of Dutch SE to Ireland (Stage 2)

After Stage 1 is implemented, Dutch SE intends to seek shareholder approval for Stage 2, which provides for the corporate domicile of Dutch SE to change from The Netherlands to Ireland.

1.7. Holdings of CUFS, ADSs and Shares through the Proposal

Shareholders will continue to hold the same number of CUFS, ADSs or CUFS they have converted to shares in Dutch SE (if Stage 1 is approved and implemented) and in Irish SE (if Stage 2 is approved and implemented) as they held beforehand. No action is required of shareholders in respect of their certificates or holding statements in connection with the Proposal. If the Proposal is approved and implemented, shareholders current certificates or holding statements for our securities will remain effective and continue to represent their holdings in Dutch SE and Irish SE (as applicable) until new holding statements are issued in the ordinary course as a result of future changes in security holdings.

1.8. Required Votes for the Proposal

Stage 1 of the Proposal will require the approval of 75% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented. Stage 2 of the Proposal will require the approval of 662/3% of shareholder votes cast at a properly held meeting at which at least 5% of Dutch SE s issued share capital is present or represented.

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2. BACKGROUND OF THE PROPOSAL AND RELATED MATTERS

This section summarises the key background events leading to your directors recommendation of the Proposal and connected transactions.

2.1. The 2001 and 2003 Reorganisations

In July 2001, we announced plans to establish a new corporate structure designed to place us and our shareholders in a position to maximise value from our existing operations and continuing international growth. The restructure resulted in the incorporation of our parent company in The Netherlands with a primary listing on the ASX in the form of CUFS and the listing of ADSs on the NYSE.

In 2003, we transferred ownership of certain intellectual property assets to The Netherlands to better manage our intellectual property assets by centralising the investment, holding and use of the intellectual property.

2.2. The Netherlands Financial Risk Reserve Regime

We currently have our finance and treasury activities centralised in a subsidiary located in The Netherlands. This subsidiary also owns, manages and develops the intellectual property that we license to our operating subsidiaries and third parties. Under Dutch law, we derive commercial and tax benefits from the group finance operations of our Netherlands based finance subsidiary. This subsidiary received a ruling from Dutch Revenue authorities that allows it to set aside 80% of the qualifying financing income received from these activities in a Financial Risk Reserve account subject to the Financial Risk Reserve regime. A similar ruling was also received that allows 72% of the gain from the disposal of intellectual property, to be included in the Financial Risk Reserve account. The other 20% of the income received from qualifying financing activities and the other 28% of the gain arising from the disposal of our intellectual property, are subject to the statutory rate of Dutch corporate tax (currently 25.5%). The Financial Risk Reserve regime also allows that 50% or 100% of qualifying equity contributions used to finance capital and certain other expenditures may be released from the Financial Risk Reserve account without being subject to any further Dutch tax. Amounts not released from the Financial Risk Reserve account prior to the expiry or early termination of the Financial Risk Reserve regime will be subject to the statutory rate of Dutch corporate tax (currently 25.5%).

The favourable tax benefits provided under the Financial Risk Reserve regime are due to expire on December 31, 2010. However, the transfer of our treasury and finance operations from The Netherlands would result in the early termination of our participation in this regime.

On June 15, 2009, the Dutch Ministry of Finance published several tax legislation proposals for comment, including the introduction of a compulsory group interest box regime. Under the currently proposed compulsory group interest box regime, interest received or paid in respect of intra-group financing would be taxable or deductible in The Netherlands at a reduced rate of 5%. On July 8, 2009, the European Commission, the executive branch of the EU, announced that the currently proposed compulsory group interest box regime does not constitute prohibited state aid under EU law. Although Dutch government officials have indicated their intent to seek adoption of such an interest box regime in The Netherlands, as of the date of this Explanatory Memorandum, no such legislation has been adopted.

We considered remaining domiciled in The Netherlands and moving only our intellectual property to another jurisdiction in the EU. While this strategy could have addressed the issue of the expiration of the Financial Risk Reserve regime in 2010 and, accordingly, the expiration of the favourable treatment of group royalty income, it would not have addressed other issues, including allowing key senior managers with global responsibility to spend more time

with James Hardie s operations and in its markets, providing greater certainty for us to obtain benefits under the US/Netherlands Treaty and increasing James Hardie s flexibility in the future to undertake certain transactions which directors believe expands our strategic options.

2.3. The US/Netherlands Treaty

As a tax resident of The Netherlands, we have received and we believe are entitled to receive substantial tax benefits under the US/Netherlands Treaty, which we believe provides for no US withholding tax on dividends,

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interest and royalties paid by our US subsidiaries to us or our subsidiaries, subject to certain conditions being met, in The Netherlands.

These benefits were available to us under the terms of the US/Netherlands Treaty that existed when we moved our domicile to The Netherlands in 2002. In 2004, the US/Netherlands Treaty was amended to include an additional requirement commonly known as the substantial presence test, which requires us to demonstrate that the primary place of management and control of the company is in The Netherlands. Because the requirements regarding primary place of management and control are set forth in the US/Netherlands Treaty and are not specifically defined, these requirements are subject to interpretation by the US IRS. In the US/Ireland Treaty, the eligibility requirements are more objective and do not require the same level of interpretation as the US/Netherlands Treaty.

The amended US/Netherlands Treaty applied to us from February 1, 2006 onward. In response to these amendments, we increased the presence of our key senior executives and added additional corporate functions and other employees in The Netherlands. We believe that as a result of our response to the 2004 amendments we have had and continue to have a substantial presence in The Netherlands and that we and our Dutch subsidiaries qualify for benefits under the amended US/Netherlands Treaty.

2.4. The US IRS 30-Day Letter

In July 2008, the US IRS concluded an audit to determine whether we satisfy the requirements under the amended US/Netherlands Treaty. As part of this audit process, the US IRS issued a 30-Day Letter in which it asserted that we and our subsidiaries in The Netherlands did not qualify for benefits under the amended US/Netherlands Treaty during 2006 and 2007.

We strongly disagreed with the assertions made by the US IRS, and contested the US IRS s findings by filing a formal protest to the 30-Day Letter through the administrative appeals process. Following a conference with the Appeals Division of the US IRS and further discussions, we announced on April 15, 2009 that the US IRS has signed a settlement agreement with the company s subsidiaries in which the US IRS conceded the US government s position in full. As a result, the US IRS has now concluded that we and our subsidiaries did qualify for prior benefits under the amended US/Netherlands Treaty during 2006 and 2007.

We believe that we and our Dutch subsidiaries have qualified and continue to qualify for treaty benefits under the amended US/Netherlands Treaty. While we ultimately prevailed in the dispute with the US IRS for the years 2006 and 2007, the US IRS could reassert its position in respect of subsequent tax periods and, accordingly, your directors consider it prudent to mitigate the risk of further disputes with the US IRS. If the US IRS were to reassert its position in respect of subsequent tax periods and the Proposal is not implemented, we may be unable to receive tax benefits under the US/Netherlands Treaty, in which case we could be liable for 30% withholding tax on dividend, interest and royalty payments in periods ending after 2007 and, again, interest charges and penalties could apply. While the Proposal will not impact the risk of withholding taxes being imposed on payments made to us or our subsidiaries in The Netherlands during 2008 and 2009, if we remain domiciled in The Netherlands, the amount of withholding tax that could be in dispute with the US IRS is estimated to be approximately US$30 million for 2010 and is expected to increase thereafter.

2.5. Our Business and Residency Requirements

2.5.1. Our Business

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In financial year 2008, we generated net sales in excess of US$1.4 billion. The majority of our building

materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of March 16, 2009, we employed 2,329 people worldwide, the majority of whom (1,410) were located in the US.

Our business in the US has been adversely affected by the decline in the US housing market and the turmoil within financial and mortgage lending institutions. These challenges make it even more difficult to maintain significant management presence in The Netherlands, away from our major operations, while continuing to comply with the substantial presence test under the amended US/Netherlands Treaty.

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2.5.2. Our Residency Requirements

To satisfy the requirements of the amended US/Netherlands Treaty as discussed under The US/Netherlands Treaty in Section 2.3, we moved our Chief Executive Officer, Chief Financial Officer and General Counsel to The Netherlands prior to February 1, 2006 and established our head office there. In addition:

- strategic decisions regarding our business have been and continue to be made in The Netherlands, and our US and Asia Pacific leadership teams travel to The Netherlands for regular meetings with the Managing Board; and

- the majority of Supervisory Board meetings have been and continue to be held in The Netherlands.

Even if increasing our management presence in The Netherlands were a viable practical and commercial option, the continued uncertainty surrounding the annual application of the amended US/Netherlands Treaty presents an unacceptable risk for us as the US IRS could, notwithstanding its concession that we and our subsidiaries qualified for benefits during 2006 and 2007, take the position at any time that the primary place of management and control requirements under the substantial presence test are not met in subsequent tax years. Failure to meet the requirements in the amended US/Netherlands Treaty would have serious ramifications for our shareholders given the large amounts of withholding tax, plus interest and penalties, in respect of future payments of interest, royalties and dividends out of the US that would be incurred.

Resolution of any disputes through litigation could take several years, would involve distraction of our management and may not be resolved in our favour. Your directors consider that the on-going US IRS risk outweighs the potential risks and disadvantages associated with the Proposal.

In any event, given the current economic environment, your directors do not believe that continuing to base key senior management with global responsibilities in The Netherlands, away from most of our operations and markets, is in the best interests of James Hardie and its shareholders.

2.6. Features of Dutch Company Law

At present Dutch company law offers limited flexibility and requires a higher threshold for shareholder acceptance in order to complete a number of transactions that would require a lower threshold for shareholder acceptance in other jurisdictions. This makes reorganising James Hardie, and undertaking transactions that your directors might consider in the future, difficult to implement.

By way of example, Dutch company law:

- does not provide for schemes of arrangement (which is a court sanctioned process that allows shareholders to approve the reorganisation of a company at a court convened meeting of members) as it exists under Australian and Irish law;

- requires acceptance by holders of 95% of all of our issued share capital to establish a non-Dutch company as the holding company for James Hardie so that the transaction would not result in two separately listed companies;

- requires 95% of all of our issued share capital to be acquired to effect a compulsory acquisition under a takeover; and

permits a single board structure in which we could allocate executive duties to our existing Managing Board members and supervisory duties to our existing Supervisory Board members, but all members of the single board would in principle be subject to collective liability for the acts or omissions of any member. A proposal has been submitted to parliament for a single board structure in The Netherlands that would mitigate this collective liability. However, there can be no assurance that a single board structure without collective liability will be adopted in The Netherlands or its timing or specific terms.

The two stage implementation of the Proposal by which we are transformed to Dutch SE and then Irish SE is a way to achieve this reorganisation within the limits of Dutch company law. At the conclusion of Stage 2, we (as Dutch SE) will cease to be subject to Dutch company law and instead (as Irish SE) will become subject to Irish law

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in addition to the SE Regulation. A summary of the key differences between Dutch and Irish law is described under the heading Summary of Key Corporate Law Differences Between Dutch SE and Irish SE in Section 5.4.

2.7. Features of Irish Company Law

By way of contrast, Irish company law offers greater flexibility and provides for more achievable shareholder acceptance thresholds for certain key types of transactions. As a result, future reorganisations of Irish SE and other types of transactions that the Irish SE board may wish to undertake would be greatly simplified.

By way of example, Irish company law:

provides for schemes of arrangement (which require approval by a majority of members in number representing not less than 75% in value of the members present and voting either in person or by proxy at a court-convened meeting of members), which could be used to, among other things, complete a reorganisation that under current Irish law would enable a new parent company domiciled in a jurisdiction outside of the EU to be established in a manner that could result in Australian capital gains tax relief being available for most shareholders that would otherwise realise a capital gain under the Australian capital gains tax provisions, or to complete other transactions that the board of Irish SE may wish to consider undertaking in the future;

in the context of an offer for the entire issued share capital of Irish SE, requires 80% (instead of 95%) of the issued share capital of Irish SE to be acquired to effect a compulsory acquisition; and

provides for a statutory takeover regime, which may be beneficial to Irish SE and its shareholders.

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3. IMPORTANT CONSIDERATIONS FOR SHAREHOLDERS

3.1. Key Benefits

The Proposal and the contemplated transfer of our intellectual property and treasury and finance operations provide the following key benefits:

- allow key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets because the US/Ireland Treaty does not contain a substantial presence test that requires these managers to spend significant time in Ireland;

- provide greater certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty. In addition, Irish SE would be eligible for a 0% withholding tax rate on royalty and interest payments made from its subsidiaries in the US to Irish SE and its subsidiaries in Ireland;

- increase our flexibility to undertake certain transactions under Irish company law, which your directors believe expands our future strategic options;

- simplify our governance structure to a single board of directors;

- make us eligible for a lower statutory tax rate for our intellectual property and treasury and finance operations than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime and, based on current Irish law and the company s current capital structure, should result in lower tax payments in respect of the intellectual property, treasury and finance operations on a combined basis than would be the case for those operations in The Netherlands even if the currently proposed compulsory group interest box regime is adopted in The Netherlands; and

- permit most shareholders to be eligible to receive dividends not subject to withholding tax.

Firstly, the amended US/Netherlands Treaty currently requires the substantial presence test to be satisfied in The Netherlands. This test requires key senior management with global responsibilities to spend considerable time in The Netherlands beyond a level required to effectively manage James Hardie s global operations as described under the heading Our Business and Residency Requirements in Section 2.5. The Proposal to move our corporate domicile to Ireland would permit our key senior management with global responsibilities to be free to spend more time with our operations and in our markets as we would no longer be restricted by the requirements of the substantial presence test.

Secondly, the Proposal addresses the concerns previously raised by the US IRS as to whether we qualify for treaty benefits under the amended US/Netherlands Treaty. The US/Ireland Treaty does not contain a substantial presence test, so the requirements for treaty benefits under the US/Ireland Treaty are clearer and more settled. Those requirements include that Irish SE be a tax resident of Ireland and that the principal class of its shares satisfies certain minimum trading requirements on one or more recognised stock exchanges (which include both the ASX and the NYSE). In light of the ruling we received from the Irish Revenue authorities relating to Irish SE qualifying as a tax resident of Ireland (see Irish Ruling Requests in Section 6.2) and our assessment that we believe we will be able to operate in the manner set out in the rulings to qualify as an Irish tax resident and that Irish SE securities will continue to be quoted for trading, and, we expect, will continue to meet the trading requirements on both the ASX and the NYSE, we believe that Irish SE will satisfy such requirements. We also believe that the objective nature of such requirements, as compared to the substantial presence test under the US/Netherlands Treaty, reduces the likelihood of

successful challenge to Irish SE s qualifications under the current US/Ireland Treaty.

Thirdly, Irish company law will permit Irish SE to pursue a range of possible future strategic options not available under existing Dutch company law. Among other things, Irish law requires the acquisition of 80% of the issued share capital of Irish SE in order to effect a compulsory acquisition where an offer has been made to acquire the entire issued share capital of Irish SE and provides for the concept of a court-approved scheme of arrangement. The ability under Irish law to effect a compulsory acquisition (at a lower threshold) and implement a court-approved scheme of arrangement could be used to complete a reorganisation or other transaction that the board of Irish SE may wish to consider in the future. Dutch law requires the acquisition of 95% of all of our issued share capital to effect a compulsory acquisition and does not provide for schemes of arrangement. The range of possible future

strategic options available as an Irish SE, as compared to those existing under Dutch company law, should allow James Hardie increased flexibility, even in the event the US/Ireland Treaty were to be changed in the future.

Fourthly, the Proposal will allow us to simplify our existing governance structure by permitting Irish SE to adopt a single board.

Fifthly, we believe that our intellectual property and treasury and finance operations will be eligible for a statutory rate of tax that currently is lower than would be the case if these operations remained in The Netherlands after the expiry of the Financial Risk Reserve regime on December 31, 2010 and, based on current Irish law and the company s current capital structure, should result in lower tax payments in respect of the intellectual property, treasury and finance operations on a combined basis than would be the case for those operations in The Netherlands even if the currently proposed compulsory group interest box regime is adopted in The Netherlands. See Taxation Impact on Irish SE in Section 5.2.4. We have received rulings from the Irish Revenue authorities relating to the tax status in Ireland of two of our newly-formed subsidiaries, which will hold our intellectual property and treasury and finance operations. Based on these rulings and our assessment that these operations will satisfy the facts set forth in our ruling requests, we believe the subsidiaries which will conduct our intellectual property and treasury and finance operations in Ireland will qualify as trading companies and will be eligible for a corporation tax rate for trading companies (currently 12.5%) which is lower than the rate that currently would be applicable in The Netherlands to these operations following the expiry of the Financial Risk Reserve regime on December 31, 2010, although group interest income would be taxable at a lower rate (5%) if the currently proposed compulsory group interest box regime is adopted in The Netherlands.

Recently, the Dutch Ministry of Finance published several tax legislation proposals for comment, including a compulsory group interest box regime. Under the currently proposed compulsory group interest box regime, interest received or paid in respect of intra-group financing will be taxable or deductible in The Netherlands at a reduced rate of 5%. On July 8, 2009, the European Commission, the executive branch of the EU, announced that the proposed compulsory group interest box regime does not constitute prohibited state aid under EU law. Although Dutch government officials have indicated their intent to seek adoption of such an interest box regime in The Netherlands, as of the date of this Explanatory Memorandum, no such legislation has been adopted. In addition, the Proposal allows Irish SE to be eligible for a 0% withholding tax rate on royalty and interest payments made from its subsidiaries in the US to Irish SE and its subsidiaries in Ireland.

Finally, dividends paid by Irish SE to most shareholders (who are resident in Australia or the US) will be eligible to be free from dividend withholding tax if certain exemptions apply and the shareholder has provided the necessary documentation. (See Irish Shareholders Taxation in Section 9.4.3.) This compares favourably to the current situation under Dutch law where dividends paid to:

- Australian resident shareholders are subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be offset by shareholders); and

- US resident shareholders (with less than a 10% shareholding in us) are subject to a 15% Dutch dividend withholding tax (with the potential for such tax to be creditable by shareholders).

However, other shareholders who are not residents of a country that has concluded a tax treaty with Ireland or who are not corporate shareholders that meet certain ownership conditions will be subject to Irish dividend withholding tax at a rate of 20%. Depending on the laws of their place of residence, such shareholders might be able to obtain a tax credit for that tax.

With these key benefits in mind and the continued uncertainty regarding the application of the US/Netherlands Treaty, your directors have explored a range of alternative options (described under the heading Other Options Considered by Your Directors in Section 3.5), and have concluded that the best course of action at this time for James Hardie and its shareholders is to effect our transformation to a European Company and move our corporate domicile from The Netherlands to Ireland and, in connection with the Proposal, transfer our intellectual property and treasury and finance operations to Ireland.

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3.2. Impact on Asbestos Funding Arrangements with AICF

3.2.1. AFFA

The AFFA was entered into by us, the Asbestos Injuries Compensation Fund Limited (as trustee for the AICF), the New South Wales Government and James Hardie 117 Pty Limited on November 21, 2006 to provide long-term funding to the AICF. This is a special purpose fund established to provide compensation for Australian asbestos-related personal injury and death claims for which certain of our former companies, including Amaca Pty Ltd and Amaba Pty Ltd, are found liable. A copy of the AFFA is available on our website at www.jameshardie.com.

3.2.2. AFFA Deed of Confirmation

While we do not consider that notice, consent or approval of the Proposal is required under the AFFA, we have advised the New South Wales Government and Asbestos Injuries Compensation Fund Limited on a courtesy basis of the details of the Proposal. We and James Hardie 117 Pty Limited have also entered into the AFFA Deed of Confirmation confirming that the AFFA and the Related Agreements (as defined in the AFFA) to which we are a party continue in effect once we are an SE with certain agreed changes to those agreements to reflect the fact that, upon implementation of Stage 2, we will become subject to Irish law.

We have agreed in the AFFA Deed of Confirmation that relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects, and we have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office s position, our rights and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

3.2.3. Funding Obligations

Implementation of the Proposal will not change the overall commitment of James Hardie to make contributions to the AICF under the AFFA.

Under the terms of the AFFA, James Hardie 117 Pty Limited has the primary obligation to make the funding contributions to Asbestos Injuries Compensation Fund Limited (as trustee for the AICF) and we have provided the New South Wales Government and Asbestos Injuries Compensation Fund Limited with an unconditional and irrevocable guarantee that the funding contributions will be made in accordance with the terms of the AFFA.

Under the AFFA, the AICF is required to be funded on an annual or quarterly basis subject to the application of various provisions under the AFFA, including a cap on annual contributions to 35% of our free cash flow in the financial year immediately preceding the payment (which we refer to as the annual free cash flow cap). Free cash flow is defined for this purpose as net cash provided by operating activities calculated in accordance with US GAAP as in force on December 21, 2004. The amount of the contribution required is dependent upon several factors, including actuarial estimations, actual claims paid by and operating expenses of the AICF, and the application of the annual free

cash flow cap.

The initial funding contribution of A$184.3 million was made to the AICF in February 2007. No contribution was required to be made under the AFFA in financial year 2008. Further contributions were made on a quarterly basis in July and October 2008 and in January and March 2009, totaling A$118.0 million (inclusive of interest).

If a contribution is due to the AICF in our 2011 financial year, which is not yet known, the costs associated with the Proposal will most likely reduce the amount of the company s contribution by an amount up to 35% of such costs associated with the Proposal. Whether, and to what extent, the costs actually reduce the payment due to the AICF in

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our 2011 financial year ultimately will depend on the amount of the payment otherwise required to be made under the AFFA and the company s free cash flow for financial year 2010 before taking account of the costs associated with the Proposal.

3.2.4. Restrictions on Specified Dealing

The AFFA provides that we will refrain from undertaking certain transactions (known as Specified Dealings as defined in the AFFA) without obtaining the prior consent of the New South Wales Government. However, a broad range of transactions are exempt from this restriction. Capitalised terms used in this Section 3.2.4 and Other Matters in Section 3.2.4 have the same meaning given to them in the AFFA unless defined otherwise in this Explanatory Memorandum. A copy of the AFFA has been filed with the US Securities and Exchange Commission as an exhibit to the registration statement of which this Explanatory Memorandum forms a part. A copy of the AFFA is also available under the Investor Relations area of our website (www.jameshardie.com, select James Hardie Investor Relations) and copies may be obtained on request. See Where You Can Find Additional Information in Section 13.

The restriction on Specified Dealings has been designed to prevent transactions that would result in us or James Hardie 117 Pty Limited ceasing to be likely to satisfy the funding obligations which would have arisen under the AFFA had the Specified Dealing not occurred.

In order for the restriction to apply, the Specified Dealing must:

> materially adversely affect the priority as between the AICF and our shareholders to a surplus from a notional winding up of ourselves and James Hardie 117 Pty Limited; or
>
> materially impair the legal or financial capacity of ourselves and James Hardie 117 Pty Limited as a whole,

such that, in each case, we and James Hardie 117 Pty Limited would, by reason of the relevant Specified Dealing, cease to be likely (assessed on a reasonable basis and having regard to all relevant circumstances) to be able to satisfy the funding and guarantee obligations which would have arisen under the AFFA had the Specified Dealing not occurred.

Those restrictions apply to certain dividends and other distributions, reorganisations of, or dealings in, share capital which create or vest rights in such capital in third parties, or non-arm s length transactions. The AFFA contains certain exemptions from such restrictions and also requires that if we undertake a Specified Dealing that is not exempt, we must provide notice of that dealing to the New South Wales Government within 14 days of the earlier of announcing and undertaking the transaction.

We do not consider that the Proposal will constitute a Specified Dealing that is restricted by the AFFA and accordingly the AFFA does not have any impact on the company implementing the Proposal.

3.2.5. Other Matters

Under the terms of the AFFA, the funding obligations of James Hardie 117 Pty Limited and our guarantee of James Hardie 117 Pty Limited s obligations under that agreement are owed only to Asbestos Injuries Compensation Fund Limited as trustee for the AICF, with the New South Wales Government having certain direct enforcement rights.

Provided that James Hardie 117 Pty Limited meets its payment obligations under the AFFA and there is no Insolvency Event, Wind-Up Event or Reconstruction Event, neither we nor our subsidiaries will have any additional liability

under the AFFA to contribute funding. We have satisfied ourselves that nothing in the Proposal involves the occurrence of an Insolvency Event, Wind-Up Event or Reconstruction Event. The New South Wales Government and the Asbestos Injuries Compensation Fund Limited also have confirmed this in the AFFA Deed of Confirmation.

3.2.6. Australian Taxation Office Rulings on Contributions under the AFFA

A number of rulings relating to the Australian tax treatment of contributions under the AFFA and other related matters previously were obtained from the Australian Taxation Office (the Rulings). While we do not anticipate

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that the Proposal will have any impact on the operation and effect of the Rulings, we have agreed with the New South Wales Government and the AICF in the AFFA Deed of Confirmation that relevant James Hardie companies and the AICF will apply to the Australian Taxation Office for rulings to replace the Rulings and for confirmation that the Accepted Tax Conditions (as defined in the AFFA) will remain unchanged in all material respects after the Proposal is implemented.

We have undertaken in the AFFA Deed of Confirmation that we will not complete the merger with Irish plc Subsidiary necessary to facilitate our transformation to Dutch SE before the Australian Taxation Office has determined these applications. We are released from this undertaking on the first to occur of the Australian Taxation Office determining the applications and 31 December 2009. If the ATO Rulings are unable to be obtained, while we would be released from our undertaking under the AFFA Deed of Confirmation we would need to reassess our ability to proceed to implement the Proposal having regard to the Australian Taxation Office s position, our rights and obligations under the AFFA and the circumstances existing at the time. However we reserve our right to proceed in those circumstances if we determine to do so.

3.3. Matters Not Affected by the Proposal

The Proposal will not affect the on-going dispute with the Australian Taxation Office in respect of RCI Pty Ltd.

As announced on March 22, 2006, RCI Pty Ltd, one of our wholly-owned subsidiaries, received an amended assessment from the Australian Taxation Office in respect of RCI Pty Ltd s income tax return for the year ended March 31, 1999. The amended assessment relates to the amount of net capital gains arising from an internal corporate restructure carried out in 1998 and has been issued pursuant to the discretion granted to the Commissioner of Taxation under Australia s general anti-avoidance laws (Part IVA of the Income Tax Assessment Act 1936). The original amended assessment issued to RCI Pty Ltd was for a total of A$412.0 million. However, after subsequent remissions of general interest charges by the Australian Taxation Office, the total was changed to A$368.0 million, comprising A$172.0 million of primary tax after allowable credits, A$43.0 million of penalties (representing 25% of primary tax) and A$153.0 million of general interest charges.

RCI Pty Ltd is appealing the amended assessment. On July 5, 2006, pursuant to an agreement negotiated with the Australian Taxation Office, we made a payment of A$189.0 million. We also agreed to guarantee the payment of the remaining 50% of the amended assessment should this appeal not be successful and to pay general interest charges accruing on the unpaid balance of the amended assessment in arrears on a quarterly basis. We believe RCI Pty Ltd s view of its tax position will be upheld on appeal, and as such no reserve or provision has been established in respect of this claim.

At the end of May 2007, the Australian Taxation Office disallowed our objection to RCI Pty Ltd s notice of amended assessment for RCI Pty Ltd for the year ended March 31, 1999. We continue to pursue all avenues of appeal to contest the Australian Taxation Office s position in this matter. The matter is expected to go before the Federal Court of Australia no later than September 2009.

3.4. Consequences if the Proposal Does Not Proceed

If the Proposal does not proceed, or if Stage 1 is approved and implemented but Stage 2 does not proceed, we will remain registered and a tax resident in The Netherlands. In that event, we will have incurred the one time tax costs estimated to range from US$30-50 million and approximately US$20 million in advisory fees and expenses and other transaction costs without the expected benefits from the Proposal. However, the costs associated with the move of our head office functions would not be incurred and we would not have to pay to maintain an office in Ireland.

In addition, when the favourable tax treatment under the Financial Risk Reserve regime ends on December 31, 2010, assuming that a new tax regime is not put into effect, interest and royalty income derived in The Netherlands will be subject to taxation at the statutory corporate tax rate (currently 25.5%) while, based on current Irish law and the company s current capital structure, the company should be eligible for lower tax payments in respect of the intellectual property, treasury and finance operations on a combined basis than would be the case for those operations in The Netherlands even if the currently proposed compulsory group interest box regime is adopted in

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The Netherlands. While there are a number of strategies that in principle could be used to reduce the impact of the statutory rate applicable to James Hardie to a lower effective tax rate, after review, given our current circumstances, we do not believe that any of the strategies we considered will satisfy our needs. For example, we considered remaining domiciled in The Netherlands and moving our intellectual property to another jurisdiction in the EU. While this strategy could have addressed the issue of the expiration of the Financial Risk Reserve regime in 2010, it would not have addressed other issues, including allowing key senior managers with global responsibility to spend more time with James Hardie s operations and in its markets, providing greater certainty for us to obtain benefits under the US/Netherlands Treaty and increasing James Hardie s flexibility in the future to undertake certain transactions which directors believe expands our strategic options. Similarly, the rate of tax on the gain from any transfer of the intellectual property after December 31, 2010 will be at that statutory rate.

Generally, interest, royalty and future dividend payments from our subsidiaries in the US to us and our subsidiaries in The Netherlands will only qualify for no withholding tax if we meet the requirements of the amended US/Netherlands Treaty. To meet these requirements, our key senior managers with global responsibilities would have to continue to spend a significant amount of time in The Netherlands away from our markets and operations.

Further, notwithstanding the concession by the US IRS that we and our subsidiaries qualified for benefits during 2006 and 2007, the year-by-year assessment by the US IRS to determine whether the requirements for benefits under the amended US/Netherlands Treaty are satisfied exposes us to the continued risk that the US IRS determines we do not qualify for treaty benefits in subsequent years. This means that interest, royalty and dividend payments from our subsidiaries in the US to us and our subsidiaries in The Netherlands could be subject to 30% US withholding tax. In the event the Proposal does not proceed, we might consider other actions to mitigate this risk.

In addition, if we remain in The Netherlands, we will continue to be subject to Dutch company law and a less flexible legal regime. This could affect our ability to complete future transactions that we may wish to pursue for the benefit of James Hardie and its shareholders.

We may determine, subject to any required consents from our lenders, to transfer our intellectual property and treasury and finance operations from The Netherlands independent of either stage being approved by shareholders and implemented. These transfers do not require shareholder approval.

3.5. Other Options Considered by Your Directors

In recommending the Proposal, your directors considered a range of alternative options before concluding that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders. Some of these options are not able to be undertaken because of the proposed location of key senior management with global responsibilities, legal, tax, accounting and other obstacles. The other options principally considered by your directors include:

Moving to Australia

We considered moving the parent company to Australia by having a new Australian parent company acquire all of our shares from shareholders in exchange for the shares issued by the new Australian parent company. Such a transaction would result in the new Australian parent company becoming our holding company. However, unless the new Australian parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly held and listed: an Australian parent company and a Dutch parent company. This is due to the requirement under Dutch law for 95% of all of our issued share capital to be acquired in order to effect a compulsory acquisition of the remaining shares. In addition, moving our corporate domicile to Australia by other means was not considered possible under Dutch company law without a potential tax cost to some

Australian tax resident shareholders.

If only our tax residence was moved to Australia, dividends paid to shareholders would continue to be subject to a 15% Dutch dividend withholding tax with the potential for such tax to be offset by shareholders. The tax treaty between Australia and The Netherlands is currently being renegotiated. We are unaware whether the renegotiation will result in any changes to the rates of dividend withholding tax.

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Moving to the US

We considered moving the parent company to the US by having a new US parent company acquire all of our shares from shareholders in exchange for shares issued by the new US parent company. Such a transaction would result in the new US parent company becoming our holding company. However, unless the new US parent company was able to acquire at least 95% of all of our issued share capital, the transaction could result in two James Hardie entities being publicly held and listed: a US parent company and a Dutch parent company. This is due to the requirement under Dutch law that 95% of all of our issued share capital be acquired in order to effect a compulsory acquisition of the remaining shares.

In light of the 95% shareholder acceptance requirement to implement this structure, we also considered a move of the parent company to the US by way of a dual incorporation structure under Delaware corporate law and Dutch company law that would only require a 75% shareholder vote. However, the structure resulting from the dual incorporation was determined to be too complex and it is unclear whether this structure would be fully recognised under Dutch law. In addition, without a ruling from the Australian Taxation Office, it was uncertain whether this transaction would have resulted in income tax liability for some Australian tax resident shareholders.

Remaining resident in The Netherlands

If we were to remain resident in The Netherlands, key senior managers with global responsibilities would be required to continue to spend a large portion of their time in The Netherlands rather than being free to spend additional time with James Hardie s operations and in its markets. Moreover, after the Financial Risk Reserve regime expires on December 31, 2010, assuming that a new tax regime is not put into effect, interest and net royalty income derived in The Netherlands will be subject to taxation at the statutory corporate tax rate (currently 25.5%). The company believes that even if the currently proposed compulsory group interest box regime is adopted in The Netherlands, based on current Irish law and the company s current capital structure, a move to Ireland should result in lower tax payments in respect of those intellectual property, treasury and finance operations on a combined basis than would be the case if the company remained in The Netherlands. While there are a number of strategies that may possibly be used to reduce the impact of the statutory rate applicable to James Hardie to a lower effective tax rate, after review, given our current circumstances, we do not believe that any of the strategies we considered would satisfy our needs. Furthermore, we would be subject to the risk of the US IRS continuing to take the view that we fail to qualify for benefits under the US/Netherlands Treaty for tax years subsequent to the 2006 and 2007 calendar years.

Transferring ownership of our intellectual property to the US and maintaining our tax residence in The Netherlands

If we were to remain resident in The Netherlands, key senior managers with global responsibilities would be required to continue to spend a large portion of their time in The Netherlands rather than being free to spend additional time with James Hardie s operations and in its markets. In addition, transferring ownership of our intellectual property assets to the US would result in an estimated US$20-24 million Dutch tax cost as of the date of this Explanatory Memorandum. This cost could be mitigated to some extent by the amortisation of the value of the intellectual property (on a straight line basis) over 15 years for US tax purposes.

In addition, this option did not address the risk of the US IRS determining that we fail to qualify for benefits under the US/Netherlands Treaty for tax years subsequent to the 2006 and 2007 calendar years.

Moving our tax residence to Ireland

If we ceased holding board meetings in The Netherlands and conducted the majority of future board meetings in Ireland and otherwise satisfied the requirement that we are centrally managed and controlled in Ireland, we could become tax resident in Ireland. However, this would result in James Hardie becoming subject to Irish tax law while at the same time remaining subject to Dutch company law.

Under this alternative, we would be exposed to future adverse changes in Irish tax law and Dutch company law. Such a strategy would not enable us to benefit from the more flexible features of Irish company law, including schemes of arrangement and a single board.

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Other

We also considered moving our domicile to Ireland without using the SE form. However, we could not merge a Dutch N.V. into an Irish company in a transaction in which the Irish company would survive without a potential income tax liability arising for some of our Australian shareholders. We also considered moving our domicile to Ireland using an exchange offer. However, that transaction would require acceptance by the holders of at least 95% of the shares in order to be able to compel the acquisition of 100% of the outstanding shares so that the transaction would not result in two James Hardie entities being publicly held and listed.

3.6. Continuation of ASX and NYSE Listings

Following the transformation of Dutch SE to Irish SE, James Hardie s securities will continue to be quoted on the ASX in the form of CUFS (with CHESS Depositary Nominees Pty Ltd. being the registered holder of the underlying shares and each CUFS representing one underlying share) and the NYSE in the form of ADSs (with The Bank of New York Mellon as the registered owner of CUFS and each ADS representing 5 CUFS/underlying shares). We intend to continue to maintain listings under the symbol JHX on both stock exchanges.

Shareholders will continue to hold the same number of CUFS, ADSs or CUFS converted to shares in Dutch SE (if Stage 1 of the Proposal is approved and implemented) and in Irish SE (if Stage 2 of the Proposal is approved and implemented) as they held beforehand. The current certificates and holding statements evidencing CUFS, ADSs or CUFS converted to shares will continue to evidence the same number and kind of securities following implementation of each stage of the Proposal.

3.7. No Irish Stamp Duty on Share Market Transactions

A ruling has been obtained from the Irish Revenue authorities confirming that on-market transactions in CUFS and ADSs through the CHESS and the NYSE trading systems, respectively, will be treated as exempt from stamp duty in Ireland. However, off-market transactions in CUFS or underlying shares, as well as conversions into and out of CUFS or ADSs may be subject to Irish stamp duty at a rate of 1% of market value or consideration paid (whichever is greater). Please refer to Irish Income Tax Consequences of the Proposal Irish Stamp Duty on Future Transfers of Irish SE Shares in Section 9.4.3.5 for further details.

3.8. Impact on External Borrowings

We have obtained confirmation from our current lending banks that the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities, and have reached agreement with our current lending banks for the rearrangement of those facilities to enable JHIF Limited to become a borrower and assume the obligations of JHIF BV under the external finance facilities at the time our financing and treasury operations are transferred from JHIF BV to JHIF Limited. This is recorded in deeds of confirmation entered into with individual lenders. Please refer to Lender Deeds of Confirmation in Section 5.2.3 for further details.

3.9. Foreign Investment Review Board Approvals

Under the Australian Government s foreign investment policy and in accordance with the requirements of the Foreign Acquisitions and Takeovers Act 1975, we have voluntarily notified the Foreign Investment Review Board of the Proposal and the proposed transfer of intellectual property from JHIF BV (a Dutch incorporated and domiciled company) to James Hardie Technology Limited (a Bermudan incorporated and Irish tax resident company) and the indirect transfer of James Hardie s Australian subsidiaries which will occur as a result of our internal reorganisation of our existing group structure in connection with the Proposal.

While there is no compulsory notification required, as the Federal Treasurer of Australia is empowered to block proposals or unwind transactions that are deemed to be contrary to Australia s national interests, we considered it to be in the best interests of James Hardie and its shareholders to voluntarily notify the Foreign Investment Review Board of the Proposal and obtain certainty that this power would not be exercised in the future.

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4. OUR TRANSFORMATION TO DUTCH SE (STAGE 1)

4.1. Introduction

This section provides further details about our transformation to Dutch SE, including a summary of the key legal differences that arise upon our transformation and additional information on the effect upon rights of shareholders.

Shareholders also should consider the other sections of this Explanatory Memorandum when deciding whether to approve the Proposal, including Corporate Domicile of Dutch SE to Ireland (Stage 2) in Section 5, which addresses the principal consequences of the subsequent change in corporate domicile to Ireland.

4.2. Summary of Key Differences between Dutch NV and Dutch SE

The *Societas Europaea* or SE is a legal form of a public limited company introduced in the EU member states by the SE Regulation. One of the benefits of the SE Regulation is that it facilitates cross border mergers and cross border transfers of registered offices of SEs within the EU, subject to a vote of shareholders, whereas greater limitations typically apply to similar cross border transactions for other legal entities.

Only a few details on the corporate structure of the SE are set forth in the SE Regulation itself. These details are as follows:

- minimum issued share capital of 120,000;
- the head office and registered office of the SE must be in the same EU member state;
- the abbreviation SE must form part of the company s name;
- the company must either have a one tier board (one board with both executives and non-executives) or a two tier board (management board and supervisory board). Our current Managing and Supervisory Boards will continue during our existence as Dutch SE, but our Joint Board will cease to exist upon implementation of Stage 1 of the Proposal; and
- the SE is a specific form of a public limited company subject to the local laws in the EU member state where it has its head office and registered seat (i.e., corporate domicile).

The more detailed rules affecting the corporate structure of an SE are the rules that apply to public limited companies in the jurisdiction of the SE s corporate domicile. Upon our transformation to Dutch SE with our registered office remaining in The Netherlands, our constituent documents will be amended as described in Section 4.5. We are currently a Dutch public limited company and therefore Dutch statutory rules on public limited companies already apply. Any other changes will be mainly technical amendments to comply with the SE Regulation and Dutch statutory law.

4.3. Head Office, Corporate Office, Intellectual Property and Treasury and Finance Operations

We do not anticipate that there will be any changes to our head office and corporate office in connection with Stage 1.

4.3.1. Intellectual Property Operations

We currently manage our intellectual property portfolio in The Netherlands through our subsidiary, JHIF BV. In connection with Stage 1 of the Proposal, we currently intend to transfer our intellectual property to James Hardie Technology Limited (which we refer to as JHT), a Bermudan incorporated company that will be resident in Ireland for tax purposes. As previously described, the transfer of our intellectual property from The Netherlands does not require shareholder approval and, su