

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2017

OR

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

For the transition period from _____ to _____.

Commission file number: 1-32381

HERBALIFE LTD.

(Exact name of registrant as specified in its charter)

Cayman Islands
(State or other jurisdiction of
incorporation or organization)

98-0377871
(I.R.S. Employer
Identification No.)

P.O. Box 309GT
Ugland House, South Church Street
Grand Cayman, Cayman Islands
(Address of principal executive offices) (Zip code)
(213) 745-0500
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Number of shares of registrant's common shares outstanding as of July 25, 2017 was 93,962,385.

HERBALIFE LTD.

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

HERBALIFE LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	June 30, 2017	December 31, 2016
(In millions, except share and par value amounts)		
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 1,624.1	\$ 844.0
Receivables, net of allowance for doubtful accounts	89.7	70.3
Inventories	378.6	371.3
Prepaid expenses and other current assets	177.0	176.9
Total current assets	<u>2,269.4</u>	<u>1,462.5</u>
Property, at cost, net of accumulated depreciation and amortization	374.0	378.0
Marketing related intangibles and other intangible assets, net	310.1	310.1
Goodwill	94.6	89.9
Other assets	361.9	324.9
Total assets	<u>\$ 3,410.0</u>	<u>\$ 2,565.4</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Accounts payable	\$ 89.5	\$ 66.0
Royalty overrides	247.9	261.2
Current portion of long-term debt	100.3	9.5
Other current liabilities	425.1	454.8
Total current liabilities	<u>862.8</u>	<u>791.5</u>
NON-CURRENT LIABILITIES:		
Long-term debt, net of current portion	2,188.1	1,438.4
Other non-current liabilities	159.1	139.2
Total liabilities	<u>3,210.0</u>	<u>2,369.1</u>
CONTINGENCIES		
SHAREHOLDERS' EQUITY:		
Common shares, \$0.001 par value; 1.0 billion shares authorized; 90.2 million (2017) and 93.1 million (2016) shares outstanding	0.1	0.1
Paid-in capital in excess of par value	442.7	467.6
Accumulated other comprehensive loss	(188.4)	(205.1)
Retained earnings (accumulated deficit)	186.1	(66.3)
Treasury stock, at cost, 3.8 million shares (2017)	(240.5)	—
Total shareholders' equity	<u>200.0</u>	<u>196.3</u>
Total liabilities and shareholders' equity	<u>\$ 3,410.0</u>	<u>\$ 2,565.4</u>

See the accompanying notes to unaudited condensed consolidated financial statements.

HERBALIFE LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF INCOME (LOSS)
(Unaudited)

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
	(In millions, except per share amounts)			
Product sales	\$ 1,088.7	\$ 1,137.9	\$ 2,133.1	\$ 2,189.9
Shipping & handling revenues	58.2	63.9	115.9	131.5
Net sales	1,146.9	1,201.8	2,249.0	2,321.4
Cost of sales	218.8	236.3	423.4	449.4
Gross profit	928.1	965.5	1,825.6	1,872.0
Royalty overrides	318.9	336.7	634.0	648.6
Selling, general & administrative expenses	443.2	676.8	881.8	1,103.9
Other operating income	(38.9)	(28.1)	(38.9)	(28.9)
Operating income (loss)	204.9	(19.9)	348.7	148.4
Interest expense, net	37.9	23.1	68.1	48.0
Income (loss) before income taxes	167.0	(43.0)	280.6	100.4
Income taxes	29.4	(20.1)	57.8	27.5
NET INCOME (LOSS)	<u>\$ 137.6</u>	<u>\$ (22.9)</u>	<u>\$ 222.8</u>	<u>\$ 72.9</u>
Earnings (loss) per share:				
Basic	\$ 1.69	\$ (0.28)	\$ 2.71	\$ 0.88
Diluted	\$ 1.61	\$ (0.28)	\$ 2.59	\$ 0.85
Weighted average shares outstanding:				
Basic	81.4	83.0	82.3	82.9
Diluted	85.3	83.0	86.0	85.9

See the accompanying notes to unaudited condensed consolidated financial statements.

HERBALIFE LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
	(In millions)			
Net income (loss)	\$ 137.6	\$ (22.9)	\$ 222.8	\$ 72.9
Other comprehensive income (loss):				
Foreign currency translation adjustment, net of income taxes of \$2.7 and \$2.3 for the three months ended June 30, 2017 and 2016, respectively, and \$5.3 and \$1.5 for the six months ended June 30, 2017 and 2016, respectively	6.7	(15.8)	29.7	4.2
Unrealized (loss) gain on derivatives, net of income taxes of \$— and \$(0.1) for the three months ended June 30, 2017 and 2016, respectively, and \$— and \$(0.3) for the six months ended June 30, 2017 and 2016, respectively	(5.5)	(1.5)	(13.0)	(7.1)
Other, net of income taxes of \$0.1 for the six months ended June 30, 2016	—	—	—	(0.1)
Total other comprehensive income (loss)	1.2	(17.3)	16.7	(3.0)
Total comprehensive income (loss)	\$ 138.8	\$ (40.2)	\$ 239.5	\$ 69.9

See the accompanying notes to unaudited condensed consolidated financial statements.

HERBALIFE LTD. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six Months Ended	
	June 30, 2017	June 30, 2016
(In millions)		
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 222.8	\$ 72.9
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	48.6	47.9
Share-based compensation expenses	22.7	20.5
Non-cash interest expense	29.5	28.7
Deferred income taxes	0.7	(21.2)
Inventory write-downs	11.2	11.2
Foreign exchange transaction loss (gain)	0.9	(2.9)
Other	(3.3)	(1.1)
Changes in operating assets and liabilities:		
Receivables	(17.8)	(20.4)
Inventories	5.2	(0.2)
Prepaid expenses and other current assets	6.0	(14.7)
Accounts payable	10.3	17.4
Royalty overrides	(23.3)	(1.4)
Other current liabilities	(48.7)	236.4
Other	12.3	(5.1)
NET CASH PROVIDED BY OPERATING ACTIVITIES	<u>277.1</u>	<u>368.0</u>
CASH FLOWS FROM INVESTING ACTIVITIES		
Purchases of property, plant and equipment	(45.9)	(86.9)
Other	(1.6)	4.5
NET CASH USED IN INVESTING ACTIVITIES	<u>(47.5)</u>	<u>(82.4)</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Borrowings from senior secured credit facility, net of discount	1,274.0	—
Principal payments on senior secured credit facility and other debt	(441.3)	(229.7)
Debt issuance costs	(22.6)	—
Share repurchases	(273.6)	(4.5)
Other	1.0	0.7
NET CASH PROVIDED BY (USED IN) FINANCING ACTIVITIES	<u>537.5</u>	<u>(233.5)</u>
EFFECT OF EXCHANGE RATE CHANGES ON CASH	<u>13.0</u>	<u>(5.2)</u>
NET CHANGE IN CASH AND CASH EQUIVALENTS	780.1	46.9
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD	844.0	889.8
CASH AND CASH EQUIVALENTS, END OF PERIOD	<u>\$ 1,624.1</u>	<u>\$ 936.7</u>

See the accompanying notes to unaudited condensed consolidated financial statements.

HERBALIFE LTD. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

1. Organization

Herbalife Ltd., a Cayman Islands exempt limited liability company, was incorporated on April 4, 2002. Herbalife Ltd. (and together with its subsidiaries, the “Company” or “Herbalife”) is a global nutrition company that sells weight management, targeted nutrition, energy, sports & fitness, and outer nutrition products to and through a network of independent members, or Members. In China, the Company sells its products to and through independent service providers, sales representatives, and sales officers to customers and preferred customers, as well as through Company-operated retail stores when necessary. The Company reports revenue in six geographic regions: North America; Mexico; South and Central America; EMEA, which consists of Europe, the Middle East and Africa; Asia Pacific (excluding China); and China.

2. Significant Accounting Policies

Basis of Presentation

The unaudited condensed consolidated interim financial information of the Company has been prepared in accordance with Article 10 of the Securities and Exchange Commission’s, or the SEC, Regulation S-X. Accordingly, as permitted by Article 10 of the SEC’s Regulation S-X, it does not include all of the information required by generally accepted accounting principles in the U.S., or U.S. GAAP, for complete financial statements. The condensed consolidated balance sheet at December 31, 2016 was derived from the audited financial statements at that date and does not include all the disclosures required by U.S. GAAP, as permitted by Article 10 of the SEC’s Regulation S-X. The Company’s unaudited condensed consolidated financial statements as of June 30, 2017, and for the three and six months ended June 30, 2017 and 2016, include Herbalife Ltd. and all of its direct and indirect subsidiaries. In the opinion of management, the accompanying financial information contains all adjustments, consisting of normal recurring adjustments, necessary to present fairly the Company’s unaudited condensed consolidated financial statements as of June 30, 2017, and for the three and six months ended June 30, 2017 and 2016. These unaudited condensed consolidated financial statements should be read in conjunction with the Company’s Annual Report on Form 10-K for the year ended December 31, 2016, or the 2016 10-K. Operating results for the three and six months ended June 30, 2017, are not necessarily indicative of the results that may be expected for the year ending December 31, 2017.

Recently Adopted Pronouncements

In March 2016, the Financial Accounting Standards Board, or FASB, issued Accounting Standards Update, or ASU No. 2016-09, *Compensation — Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*. This ASU is intended to simplify various aspects related to how share-based payments are accounted for and presented in the financial statements, including the income tax effects of share-based payments and accounting for forfeitures. The amendments in this update became effective for the Company’s reporting period beginning January 1, 2017. This guidance requires the Company to recognize excess tax benefits on share-based compensation arrangements in its tax provision, instead of in shareholders’ equity as under the previous guidance. During the three and six months ended June 30, 2017, the Company recorded \$21.4 million and \$25.7 million of excess tax benefits in its tax provision, respectively, as described further in Note 8, *Income Taxes*. In addition, these amounts are now required to be classified as an operating activity in the Company’s statement of cash flows rather than a financing activity. The Company has elected to present the cash flow statement using a prospective transition method and prior periods have not been adjusted. In addition, the Company has made an accounting policy election to continue to estimate the number of forfeitures expected to occur. The adoption of this guidance also increased the Company’s number of shares used in its calculation of fully diluted earnings per share due to the reduction in assumed proceeds under the treasury stock method which also impacts how the Company determines its earnings per share calculation. Upon adoption of this guidance on January 1, 2017, the Company also recognized \$29.6 million of its unrealized excess tax benefits, described further in Note 12, *Income Taxes* in the 2016 10-K, as deferred tax assets on its consolidated balance sheet with a corresponding increase to its retained earnings.

In March 2016, the FASB issued ASU No. 2016-06, *Derivatives and Hedging (Topic 815): Contingent Put and Call Options in Debt Instruments*. This ASU clarified the requirements for assessing whether contingent put or call options that can accelerate the payment of principal on debt instruments are clearly and closely related (i.e. an entity is required to assess whether the economic characteristics and risks of embedded put or call options are clearly and closely related to those of their debt hosts only in accordance with the four-step decision sequence of FASB Accounting Standards Codification, or ASC 815, *Derivatives and Hedging*). An entity should no longer assess whether the event that triggers the ability to exercise a put or call option is related to interest rates or credit risk of the entity. In the first quarter of 2017, the Company adopted and applied the standard to its applicable financial instruments. The adoption of this guidance had no financial impact on the Company’s consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-05, *Derivatives and Hedging (Topic 815): Effect of Derivative Contract Novations on Existing Hedge Accounting Relationships*. This ASU provides guidance clarifying that the novation of a derivative contract (i.e. a change in counterparty) in a hedge accounting relationship does not, in and of itself, require dedesignation of that hedge accounting relationship. If all of the other hedge accounting criteria are met, including the expectation that the hedge will be highly effective when the creditworthiness of the new counterpart to the derivative contract is considered, the hedging relationship will continue uninterrupted. The adoption of this guidance during the first quarter of 2017 had no financial impact on the Company's consolidated financial statements.

New Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. The new revenue recognition standard provides a five-step analysis of contracts to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. In August 2015, the FASB deferred the effective date of ASU No. 2014-09 for all entities by one year to annual reporting periods beginning after December 15, 2017. The FASB has issued several updates subsequently including implementation guidance on principal versus agent considerations, on how an entity should account for licensing arrangements with customers, and to improve guidance on assessing collectability, presentation of sales taxes, noncash consideration, and contract modifications and completed contracts at transition. The amendments in this series of updates shall be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. Early adoption is permitted. The Company continues to assess the impact this ASU, and related subsequent updates, will have on its consolidated financial statements. The Company continues to analyze its worldwide business, its revenue streams and its payments to Members to determine the timing of recognition and the income statement classification. Based on the Company's ongoing assessment as of June 30, 2017, it has not identified any material impact to its consolidated net income relating to this ASU. However, the final impact of this ASU on the Company's financial statements will not be known until the assessment is complete. The Company expects to update its disclosure in future periods as the analysis is completed.

In January 2016, the FASB issued ASU No. 2016-01, *Financial Instruments – Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*. The updated guidance enhances the reporting model for financial instruments by modifying how entities measure and recognize equity investments and present changes in the fair value of financial liabilities, and by simplifying the disclosure guidance for financial instruments. The amendments in this update are effective for fiscal years beginning after December 15, 2017. The amendments in this update should be applied prospectively. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)*. The updated guidance requires lessees to recognize a lease liability and a right-of-use asset, measured at the present value of the future minimum lease payments, at the lease commencement date. Recognition, measurement and presentation of expenses will depend on classification as a finance or operating lease. The amendments also require certain quantitative and qualitative disclosures. ASU 2016-02 is effective for all interim and annual reporting periods beginning after December 15, 2018, with early adoption permitted. A modified retrospective approach must be applied for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The Company is evaluating the potential impact of this adoption on its consolidated financial statements, however, increases in both assets and liabilities are expected.

In March 2016, the FASB issued ASU No. 2016-04, *Liabilities — Extinguishments of Liabilities (Subtopic 405-20): Recognition of Breakage for Certain Prepaid Stored-Value Products*. This ASU requires entities that sell prepaid stored-value products redeemable for goods, services or cash at third-party merchants to recognize breakage (i.e., the value that is ultimately not redeemed by the consumer) in a way that is consistent with how it will be recognized under the new revenue recognition standard. Under current U.S. GAAP, there is diversity in practice in how entities account for breakage that results when a consumer does not redeem the entire product balance. This ASU clarifies that an entity's liability for prepaid stored-value products within its scope meets the definition of a financial liability. The amendments in this update are effective for reporting periods beginning after December 15, 2017, with early adoption permitted. The amendment may be applied using either a modified retrospective approach or a full retrospective approach. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instrument — Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*. This ASU changes the impairment model for most financial assets, requiring the use of an expected loss model which requires entities to estimate the lifetime expected credit loss on financial assets measured at amortized cost. Such credit losses will be recorded as an allowance to offset the amortized cost of the financial asset, resulting in a net presentation of the amount expected to be collected on the financial asset. In addition, credit losses relating to available-for-sale debt securities will now be recorded through an allowance for credit losses rather than as a direct write-down to the security. The amendments in this update are effective for reporting periods beginning after December 15, 2019, with early adoption permitted for reporting periods beginning after December 15, 2018. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. This ASU provides clarification on eight specific cash flow issues regarding presentation and classification in the statement of cash flows with the objective of reducing the existing diversity in practice. The amendments in this update are effective for reporting periods beginning after December 15, 2017, with early adoption permitted. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory*. This ASU requires that entities recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. The amendments in this update do not change U.S. GAAP for the pre-tax effects of an intra-entity asset transfer under Topic 810, *Consolidation*, or for an intra-entity transfer of inventory. The amendments in this update are effective for reporting periods beginning after December 15, 2017, with early adoption permitted. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*. This ASU requires that restricted cash and restricted cash equivalents be included with cash and cash equivalents when reconciling the beginning-of-period and end-of-period amounts shown on the statements of cash flows. The amendments in this update are effective for reporting periods beginning after December 15, 2017, with early adoption permitted. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles — Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. This ASU simplifies the test for goodwill impairment by removing Step 2 from the goodwill impairment test. Companies will now perform the goodwill impairment test by comparing the fair value of a reporting unit with its carrying amount, recognizing an impairment charge for the amount by which the carrying amount exceeds the reporting unit's fair value not to exceed the total amount of goodwill allocated to that reporting unit. An entity still has the option to perform the qualitative assessment for a reporting unit to determine if the quantitative impairment test is necessary. The amendments in this update are effective for goodwill impairment tests in fiscal years beginning after December 15, 2019, with early adoption permitted for goodwill impairment tests performed after January 1, 2017. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation — Stock Compensation (Topic 718): Scope of Modification Accounting*. This ASU provides additional guidance for when a company should apply modification accounting when there is a change in either the terms or conditions of a share-based payment award. Specifically, a company should not apply modification accounting if the fair value, vesting conditions, and classification of the award remains the same immediately before and after the modification. The amendments in this update must be applied on a prospective basis and are effective for reporting periods beginning after December 15, 2017, with early adoption permitted. The Company is evaluating the potential impact of this adoption on its consolidated financial statements.

Distributor Compensation – U.S.

In the U.S., distributor compensation, including Royalty overrides, is capped if the Company does not meet an annual requirement as described in the Consent Order. On a periodic basis, the Company evaluates if this requirement will be achieved by year end to determine if a cap on distributor compensation will be required, and then determines the appropriate amount of distributor compensation expense, which may vary in each reporting period. As of June 30, 2017, the Company believes that the cap to distributor compensation will not be applicable for the current year.

Other Operating Income

To encourage local investment and operations, governments in various China provinces conduct grant programs. The Company applied for and received several such grants in China. Government grants are recorded into income when a legal right to the grant exists, there is a reasonable assurance that the grant proceeds will be received, and the substantive conditions under which the grants were provided have been met. During the three and six months ended June 30, 2017, the Company recognized \$38.9 million in government grant income related to its regional headquarters and distribution centers within China as compared to \$28.1 million and \$28.9 million for the same periods in 2016. The Company intends to continue applying for government grants in China when programs are available; however, there is no assurance that the Company will receive grants in future periods.

Reclassifications

Certain reclassifications were made to the prior period condensed consolidated balance sheets, the condensed consolidated statements of comprehensive income (loss), and the condensed consolidated statements of cash flows to conform to the current period presentation. See Note 13, *Detail of Certain Balance Sheet Accounts*, for further information on certain balance sheet items that are combined for financial statement presentation.

3. Inventories

Inventories consist primarily of finished goods available for resale. Inventories are stated at lower of cost (primarily on the first-in, first-out basis) and net realizable value.

The following are the major classes of inventory:

	June 30, 2017	December 31, 2016
	(In millions)	
Raw materials	\$ 41.7	\$ 49.3
Work in process	6.3	3.9
Finished goods	330.6	318.1
Total	<u>\$ 378.6</u>	<u>\$ 371.3</u>

4. Long-Term Debt

Long-term debt consists of the following:

	June 30, 2017	December 31, 2016
	(In millions)	
Borrowings under prior senior secured credit facility, carrying value	\$ —	\$ 410.0
Borrowings under new senior secured credit facility, carrying value	1,235.0	—
Convertible senior notes, carrying value of liability component	1,047.0	1,024.8
Other	6.4	13.1
Total	<u>2,288.4</u>	<u>1,447.9</u>
Less: current portion	100.3	9.5
Long-term portion	<u>\$ 2,188.1</u>	<u>\$ 1,438.4</u>

Senior Secured Credit Facility

On May 4, 2015, the Company amended its prior senior secured credit facility, or the Prior Credit Facility, to extend the maturity date of its revolving credit facility, or the Prior Revolving Credit Facility, by one year to March 9, 2017. Pursuant to this amendment and upon execution, the Company made prepayments of approximately \$20.3 million and \$50.9 million on its \$500 million term loan under the Prior Credit Facility, or the Prior Term Loan, and the Prior Revolving Credit Facility, respectively. Additionally, the Company's \$700 million borrowing capacity on its Prior Revolving Credit Facility was reduced by approximately \$235.9 million upon execution of this amendment, and was further reduced by approximately \$39.1 million on September 30, 2015. The Prior Term Loan matured on March 9, 2016 and was repaid in full. The total available borrowing capacity under the Prior Revolving Credit Facility was \$425.0 million as of December 31, 2016. Prior to March 9, 2016, the interest rates on the Company's borrowings under the Prior Credit Facility remained effectively unchanged except that the minimum applicable margin was increased by 0.50% and LIBOR was subject to a minimum floor of 0.25%. After March 9, 2016, the applicable interest rates on the Company's borrowings under the Prior Credit Facility increased by 2.00% such that borrowings under the Prior Credit Facility began bearing interest at either LIBOR plus the applicable margin between 4.00% and 5.00% or the base rate plus the applicable margin between 3.00% and 4.00%, based on the Company's consolidated leverage ratio. The Company incurred approximately \$6.2 million of debt issuance costs in connection with the amendment. These debt issuance costs were recorded on the Company's condensed consolidated balance sheet and were amortized over the life of the Prior Revolving Credit Facility.

On February 15, 2017, the Company entered into a new \$1,450.0 million senior secured credit facility, or the Credit Facility, consisting of a \$1,300.0 million term loan B, or the Term Loan, and a \$150 million revolving credit facility, or the Revolving Credit Facility, with a syndicate of financial institutions as lenders, or Lenders. The Revolving Credit Facility matures on February 15, 2022 and the Term Loan matures on February 15, 2023.

The Term Loan was issued to the Lenders at a 2% discount, or \$26.0 million. In connection with the Credit Facility, the Company also repaid the \$410.0 million outstanding balance on its Prior Revolving Credit Facility. The Company incurred approximately \$22.6 million of debt issuance costs in connection with the Credit Facility. The debt issuance costs and the discount are recorded on the Company's condensed consolidated balance sheet and are being amortized over the life of the Credit Facility using the effective interest method.

Borrowings under the Term Loan bear interest at either the eurocurrency rate plus a margin of 5.50% or the base rate plus a margin of 4.50%. Prior to August 15, 2017, borrowings under the Revolving Credit Facility bear interest at the eurocurrency rate plus a margin of 4.75% or the base rate plus a margin of 3.75%. After August 15, 2017, borrowings under the Revolving Credit Facility, depending on Herbalife's consolidated leverage ratio, will bear interest at either the eurocurrency rate plus a margin of either 4.50% or 4.75% or the base rate plus a margin of either 3.50% or 3.75%. The base rate represents the highest of the Federal Funds Rate plus 0.50%, one-month adjusted LIBOR plus 1.00%, and the prime rate set by Credit Suisse, and is subject to a floor of 1.75%. The eurocurrency rate is based on adjusted LIBOR and is subject to a floor of 0.75%. The Company is required to pay a commitment fee on the Revolving Facility of 0.50% per annum on the undrawn portion of the Revolving Credit Facility. Interest is due at least quarterly on amounts outstanding on the Credit Facility.

The Credit Facility requires the Company to comply with a leverage ratio. In addition, the Credit Facility contains customary events of default and covenants, including covenants that limit or restrict the Company's ability to incur liens, incur indebtedness, make investments, dispose of assets, make certain restricted payments, pay dividends, repurchase its common shares, merge or consolidate and enter into certain transactions with affiliates. The Company is also required to maintain a minimum balance of \$200.0 million of consolidated cash and cash equivalents. As of June 30, 2017 and December 31, 2016, the Company was in compliance with its debt covenants under the Credit Facility and the Prior Credit Facility, respectively.

The Term Loan is payable in consecutive quarterly installments each in an aggregate principal amount of \$24.4 million which began on June 30, 2017. In addition, the Company may be required to make mandatory prepayments towards the Term Loan based on the Company's consolidated leverage ratio and annual excess cash flows as defined under the terms of the Credit Facility. The Company is also permitted to make voluntary prepayments. These prepayments, if any, will be applied against remaining quarterly installments owed under the Term Loan in order of maturity with the remaining principal due upon maturity.

On June 30, 2017 and December 31, 2016, the weighted average interest rate for borrowings under the Credit Facility and the Prior Credit Facility, was 6.53% and 4.29%, respectively.

During the three months ended March 31, 2017, the Company repaid a total amount of \$410.0 million to repay in full amounts outstanding on the Prior Revolving Credit Facility. During the three months ended June 30, 2017, the Company repaid a total amount of \$24.4 million on amounts outstanding under the Term Loan. During the three months ended March 31, 2016, the Company repaid a total amount of \$229.7 million to repay in full the Prior Term Loan. The Company did not repay any amounts under the Prior Revolving Credit Facility during the three months ended June 30, 2016. As of June 30, 2017, the U.S. dollar amount outstanding under the Term Loan was \$1,275.6 million. There were no borrowings outstanding on the Revolving Credit Facility as of June 30, 2017. As of December 31, 2016, the U.S. dollar amount outstanding under the Prior Revolving Credit Facility was \$410.0 million. There were no outstanding foreign currency borrowings as of June 30, 2017 and December 31, 2016 under the Credit Facility and the Prior Credit Facility, respectively.

During the three and six months ended June 30, 2017, the Company recognized \$23.4 million and \$34.6 million, respectively, of interest expense relating to the Term Loan, which included \$1.2 million and \$1.8 million, respectively, relating to non-cash interest expense relating to the debt discount and \$0.8 million and \$1.2 million, respectively, relating to amortization of debt issuance costs.

The fair value of the outstanding borrowings on the Term Loan is determined by utilizing over-the-counter market quotes, which are considered Level 2 inputs as defined in Note 12, *Fair Value Measurements*. As of June 30, 2017, the carrying amount of the Term Loan was \$1,235.0 million and the fair value was approximately \$1.28 billion. There were no amounts outstanding on the Revolving Credit Facility as of June 30, 2017. The fair value of the outstanding borrowings on the Company's Prior Revolving Credit Facility approximated its carrying value as of December 31, 2016 due to its variable interest rate which reprices frequently and which represents floating market rates. The fair value of the outstanding borrowings on the Prior Revolving Credit Facility was determined by utilizing Level 2 inputs as defined in Note 12 *Fair Value Measurements*, such as observable market interest rates and yield curves.

Convertible Senior Notes

During February 2014, the Company initially issued \$1 billion aggregate principal amount of convertible senior notes, or Convertible Notes, in a private offering to qualified institutional buyers, pursuant to Rule 144A under the Securities Act of 1933, as amended. The Company granted an option to the initial purchasers to purchase up to an additional \$150 million aggregate principal amount of Convertible Notes which was subsequently exercised in full during February 2014, resulting in a total issuance of \$1.15 billion aggregate principal amount of Convertible Notes. The Convertible Notes are senior unsecured obligations which rank effectively subordinate to any of the Company's existing and future secured indebtedness, including amounts outstanding under the Credit Facility, to the extent of the value of the assets securing such indebtedness. The Convertible Notes pay interest at a rate of 2.00% per annum payable semiannually in arrears on February 15 and August 15 of each year, beginning on August 15, 2014. The Convertible Notes mature on August 15, 2019, unless earlier repurchased or converted. The Company may not redeem the Convertible Notes prior to their stated maturity date. Holders of the Convertible Notes may convert their notes at their option under the following circumstances: (i) during any calendar quarter commencing after the calendar quarter ending March 31, 2014, if the last reported sale price of the Company's common shares for at least 20 trading days (whether or not consecutive) in a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price for the Convertible Notes on each applicable trading day; (ii) during the five business-day period immediately after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of Convertible Notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of the Company's common shares and the conversion rate for the Convertible Notes for each such day; or (iii) upon the occurrence of specified corporate events. On and after May 15, 2019, holders may convert their Convertible Notes at any time, regardless of the foregoing circumstances. Upon conversion, the Convertible Notes will be settled in cash and, if applicable, the Company's common shares, based on the applicable conversion rate at such time. The Convertible Notes had an initial conversion rate of 11.5908 common shares per \$1,000 principal amount of the Convertible Notes (which is equal to an initial conversion price of approximately \$86.28 per common share).

The Company incurred approximately \$26.6 million of issuance costs during the first quarter of 2014 relating to the issuance of the Convertible Notes. Of the \$26.6 million issuance costs incurred, \$21.5 million and \$5.1 million were recorded as debt issuance costs and additional paid-in capital, respectively, in proportion to the allocation of the proceeds of the Convertible Notes. The \$21.5 million of debt issuance cost recorded on the Company's condensed consolidated balance sheet is being amortized over the contractual term of the Convertible Notes using the effective interest method.

During February 2014, the \$1.15 billion proceeds received from the issuance of the Convertible Notes were initially allocated between long-term debt, or liability component, and additional paid-in-capital, or equity component, within the Company's condensed consolidated balance sheet at \$930.9 million and \$219.1 million, respectively. The liability component was measured using the nonconvertible debt interest rate. The carrying amount of the equity component representing the conversion option was determined by deducting the fair value of the liability component from the face value of the Convertible Notes as a whole. Since the Company must still settle these Convertible Notes at face value at or prior to maturity, this liability component will be accreted up to its face value resulting in additional non-cash interest expense being recognized within the Company's condensed consolidated statements of income (loss) while the Convertible Notes remain outstanding. The effective interest rate on the Convertible Notes is approximately 6.2% per annum. The equity component is not remeasured as long as it continues to meet the conditions for equity classification.

As of June 30, 2017, the outstanding principal on the Convertible Notes was \$1.15 billion, the unamortized debt discount and debt issuance cost was \$103.0 million, and the carrying amount of the liability component was \$1,047.0 million, which was recorded to long-term debt within the Company's condensed consolidated balance sheet as reflected in the table above within this Note. As of December 31, 2016, the outstanding principal on the Convertible Notes was \$1.15 billion, the unamortized debt discount and debt issuance costs was \$125.2 million, and the carrying amount of the liability component was \$1,024.8 million, which was recorded to long-term debt within the Company's consolidated balance sheet as reflected in the table above within this Note. The fair value of the liability component relating to the Convertible Notes was approximately \$1,064.5 million and \$961.3 million as of June 30, 2017 and December 31, 2016, respectively. At June 30, 2017 and December 31, 2016, the Company determined the fair value of the liability component of the Convertible Notes using two valuation methods. The Company reviewed market data that was available for publicly traded, senior, unsecured nonconvertible corporate bonds issued by companies with similar credit ratings. Assumptions used in the estimate represent what market participants would use in pricing the liability component, including market yields and credit standing to develop the straight debt yield estimate. The Company also used a lattice model, which included inputs such as stock price, the Convertible Note trading price, volatility and dividend yield to estimate the straight debt yield. The Company combined the results of the two valuation methods to determine the fair value of the liability component of the Convertible Notes. Most of these inputs are primarily considered Level 2 and Level 3 inputs. This valuation approach was similar to the approach the Company used to determine the initial fair value of the liability component of the Convertible Notes on the February 7, 2014 issuance date.

In conjunction with the issuance of the Convertible Notes, during February 2014, the Company paid approximately \$685.8 million to enter into prepaid forward share repurchase transactions, or the Forward Transactions, with certain financial institutions, and paid approximately \$123.8 million to enter into capped call transactions with respect to its common shares, or the Capped Call Transactions, with certain financial institutions. See Note 10, *Shareholders' Equity*, for additional discussion on the Forward Transactions and Capped Call Transactions entered into in conjunction with the issuance of these Convertible Notes.

During the three and six months ended June 30, 2017, the Company recognized \$17.0 million and \$33.7 million, respectively, of interest expense relating to the Convertible Notes, which included \$10.2 million and \$20.2 million, respectively, relating to non-cash interest expense relating to the debt discount and \$1.0 million and \$2.0 million, respectively, relating to amortization of debt issuance costs. During the three and six months ended June 30, 2016, the Company recognized \$16.2 million and \$32.3 million, respectively, of interest expense relating to the Convertible Notes, which included \$9.6 million and \$19.0 million, respectively, relating to non-cash interest expense relating to the debt discount and \$1.0 million and \$1.9 million, respectively, relating to amortization of debt issuance costs.

Total Debt

The Company's total interest expense was \$41.9 million and \$24.6 million for the three months ended June 30, 2017 and 2016, respectively, and \$74.4 million and \$50.6 million for the six months ended June 30, 2017 and 2016, respectively, which was recognized within its condensed consolidated statements of income (loss).

As of June 30, 2017, annual scheduled principal payments of debt were: \$51.5 million for the remainder of 2017; and \$100.4 million; \$1,247.9 million; \$97.9 million; \$97.5 million; \$97.5 million; and \$739.4 million for the years ended December 31, 2018, 2019, 2020, 2021, 2022, and 2023, respectively.

Certain vendors and government agencies may require letters of credit or similar guaranteeing arrangements to be issued or executed. As of June 30, 2017, the Company had \$39.5 million of issued but undrawn letters of credit or similar arrangements that were unsecured, which included the Mexico Value Added Tax, or VAT, related surety bonds described in Note 5, *Contingencies*.

5. Contingencies

The Company is from time to time engaged in routine litigation. The Company regularly reviews all pending litigation matters in which it is involved and establishes reserves deemed appropriate by management for these litigation matters when a probable loss estimate can be made.

Tax Matters

On May 7, 2010, the Company received an assessment from the Mexican Tax Administration Service in an amount equivalent to approximately \$63 million, translated at the June 30, 2017 spot rate, for various items, the majority of which was VAT allegedly owed on certain of the Company's products imported into Mexico during the years 2005 and 2006. This assessment is subject to interest and inflationary adjustments. On July 8, 2010, the Company initiated a formal administrative appeal process. On May 13, 2011, the Mexican Tax Administration Service issued a resolution on the Company's administrative appeal. The resolution nullified the assessment. Since the Mexican Tax Administration Service can further review the tax audit findings and re-issue some or all of the original assessment, the Company commenced litigation in the Tax Court of Mexico in August 2011 to dispute the assertions made by the Mexican Tax Administration Service in the case. The Company received notification on February 6, 2015 that the Tax Court of Mexico nullified substantially all of the assessment. On March 18, 2015, the Mexican Tax Administration Service filed an appeal against the verdict with the Circuit Court. On August 27, 2015, the Circuit Court remanded the case back to the Tax Court of Mexico to reconsider a portion of the procedural decision that was adverse to the Mexican Tax Administration Service. The Company received notification on March 18, 2016 that the Tax Court of Mexico nullified a portion of the assessment and upheld a portion of the original assessment. On August 25, 2016, the Company filed a further appeal of this decision to the Circuit Court. On April 6, 2017, the Circuit Court issued a verdict with the Company prevailing on some lesser issues and the Tax Administration Service prevailing on the core issue. On May 11, 2017, the Company filed a further appeal to the Supreme Court of Mexico. On June 14, 2017, the Supreme Court of Mexico agreed to hear the appeal. The Company believes that it has meritorious defenses if the assessment is reissued. The Company has not recognized a loss as the Company does not believe a loss is probable.

The Mexican Tax Administration Service commenced audits of the Company's Mexican subsidiaries for the period from January to September 2007 and on May 10, 2013, the Company received an assessment of approximately \$16.2 million, translated at the June 30, 2017 spot rate, related to that period. On July 11, 2013, the Company filed an administrative appeal disputing the assessment. On September 22, 2014, the Mexican Tax Administration Service denied the Company's administrative appeal. The Company commenced litigation in the Tax Court of Mexico in November 2014 to dispute the assertions made by the Mexican Tax Administration Service in the case. The Company issued a surety bond in the amount of \$17.9 million, translated at the June 30, 2017 spot rate, through an insurance company to guarantee payment of the tax assessment as required while the Company pursues an appeal of the assessment. Litigation in this case is currently ongoing. The Company has not recognized a loss as the Company does not believe a loss is probable.

The Mexican Tax Administration Service has delayed processing VAT refunds for companies operating in Mexico and the Company believes that the process for its Mexico subsidiary to receive VAT refunds may be delayed. As of June 30, 2017, the Company had \$47.6 million of Mexico VAT related assets, of which \$40.7 million was within non-current other assets and \$6.9 million was within prepaid expenses and other current assets on its consolidated balance sheet. This amount relates to VAT payments made over various periods and the Company believes these amounts are recoverable by refund or they may be applied against certain future tax liabilities. The Company has not recognized any losses related to these VAT related assets as the Company does not believe a loss is probable.

On March 26, 2015, the Office of the President of Mexico issued a decree relating to the application of VAT to Nutritional Supplements. The Company continues to believe its application of the VAT law in Mexico is correct. At June 30, 2017, the Company has not recognized any losses as the Company, based on its current analysis and guidance from its advisors, does not believe a loss is probable. The Company continues to evaluate and monitor its situation as it develops, including whether it will make any changes to its operations in Mexico.

The Company has not recognized a loss with respect to any of these Mexican matters as the Company, based on its analysis and guidance from its advisors, does not believe a loss is probable. Further, the Company is currently unable to reasonably estimate a possible loss or range of loss that could result from an unfavorable outcome if an assessment was re-issued or any additional assessments were to be issued for these or other periods. The Company believes that it has meritorious defenses if an assessment is re-issued or would have meritorious defenses if any additional assessment is issued.

As previously disclosed, the Mexican Tax Administration Service has requested information related to the Company's 2010 year. This information has been provided and the Tax Administration Service has now completed its income tax audit related to the 2010 year. The Tax Administration Service is now discussing its preliminary findings with the Company. It is possible that the Company could receive a final assessment from the Tax Administration Service after these discussions are completed. The Company believes that it has recognized an appropriate amount of income tax expense with respect to its Mexican operations during the 2010 year. The Company believes that it has meritorious defenses if a formal assessment is issued by the Tax Administration Service. The Company is currently unable to reasonably estimate the amount of loss that may result from an unfavorable outcome if a formal assessment is issued by the Tax Administration Service.

The Company received a tax assessment in September 2009 from the Federal Revenue Office of Brazil in an amount equivalent to approximately \$2.1 million, translated at the June 30, 2017 spot rate, related to withholding/contributions based on payments to the Company's Members during 2004. On December 28, 2010, the Company appealed this tax assessment to the Administrative Council of Tax Appeals (2nd level administrative appeal). The Company believes it has meritorious defenses and it has not recognized a loss as the Company does not believe a loss is probable. On March 6, 2014, the Company was notified of a similar audit of the 2011 year. In January 2016, the Company received a tax assessment for an amount equivalent to approximately \$5.3 million, translated at the June 30, 2017 spot rate, related to contributions based on payments to the Company's Members during 2011. The Company filed a first level administrative appeal against most of the assessment on February 23, 2016, which was subsequently denied. On March 13, 2017, the Company appealed this tax assessment to the Administrative Council of Tax Appeals (2nd level administrative appeal). The Company has not accrued a loss for the majority of the assessment because the Company does not believe a loss is probable. The Company is currently unable to reasonably estimate the amount of the loss that may result from an unfavorable outcome if additional assessments for other periods were to be issued.

The Company's Brazilian subsidiary pays ICMS-ST taxes on its product purchases, similar to VAT. As of June 30, 2017, the Company had \$17.0 million of Brazil ICMS-ST, of which \$9.0 million was within non-current other assets and \$8.0 million was within prepaid expenses and other current assets on its condensed consolidated balance sheet. The Company believes it will be able to utilize or recover these ICMS-ST credits in the future.

The Company is under examination in several Brazilian states related to ICMS and ICMS-ST taxation. Some of these examinations have resulted in assessments for underpaid tax that the Company has appealed. The State of Sao Paulo has audited the Company for the 2013 and 2014 tax years. During July 2016, for the State of Sao Paulo, the Company received an assessment in the aggregate amount of approximately \$48.6 million, translated at the June 30, 2017 spot rate, relating to various ICMS issues for its 2013 tax year and it is possible the Company could receive a similar assessment for its 2014 tax year. In August 2016, the Company filed a first level administrative appeal which was denied in February 2017. The Company filed a further appeal on March 9, 2017. The Company has not recognized a loss as the Company does not believe a loss is probable. The Company has also received other ICMS tax assessments in Brazil. During the fourth quarter of 2015, the Company filed appeals with state judicial courts against three of the assessments. The Company had issued surety bonds in the aggregate amount of \$12.6 million, translated at the June 30, 2017 spot rate, to guarantee payment of some of the tax assessments as required while the Company pursues the appeals. In addition, the Company has received several ICMS tax assessments in the aggregate amount of \$6.9 million, translated at the June 30, 2017 spot rate, from several Brazilian states where surety bonds have not been issued. Litigation in all these cases is currently ongoing. The Company has not recognized a loss as the Company does not believe a loss is probable.

The Company has received various tax assessments in multiple states in India for multiple years from the Indian VAT authorities in an amount equivalent to approximately \$8.2 million, translated at the June 30, 2017 spot rate. These assessments are for underpaid VAT. The Company is litigating these cases at the tax administrative level and the tax tribunal levels as it believes it has meritorious defenses. The Company has not recognized a loss as it does not believe a loss is probable.

The Korea Customs Service audited the importation activities of Herbalife Korea for the period January 2011 through May 2013. The total assessment for the audit period is \$31.4 million translated at the June 30, 2017 spot rate. The Company has paid the assessment and has recognized these payments within other assets on its condensed consolidated balance sheet. The Company lodged a first level administrative appeal, which was denied on October 21, 2016. On January 31, 2017, the Company filed a further appeal to the National Tax Tribunal of Korea. The Company disagrees with the assertions made in the assessments, as well as the calculation methodology used in the assessments. The Company has not recognized a loss as the Company does not believe a loss is probable.

During the course of 2016, the Company received various questions from the Greek Social Security Agency and on December 29, 2016, the Greek Social Security Agency issued an assessment of approximately \$2.3 million translated at the June 30, 2017 spot rate, with respect to Social Security Contributions on Member earnings for the 2006 year. For Social Security issues, the Statute of Limitations is open for 2007 and later years in Greece. The Company could receive similar assessments covering other years. The Company disputes the allegations raised in the assessment and has filed an administrative appeal against the assessment with the Social Security Agency. The Company has not recognized a loss as it does not believe a loss is probable.

U.S. Federal Trade Commission Consent Order

As previously disclosed, the Company received from the U.S. Federal Trade Commission, or the FTC, a Civil Investigative Demand, or a CID, relating to the FTC's confidential investigation of whether the Company has complied with federal law in the advertising, marketing, or sale of business opportunities. On July 15, 2016, the Company and the FTC entered into a proposed Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment, or the Consent Order. The Consent Order was lodged with the U.S. District Court for the Central District of California on July 15, 2016 and became effective on July 25, 2016, or the Effective Date, upon final approval by the Court. The Consent Order resolved the FTC's multi-year investigation of the Company.

Pursuant to the Consent Order, under which the Company neither admitted nor denied the FTC's allegations (except as to the Court having jurisdiction over the matter), the Company made, through its wholly owned subsidiary Herbalife International of America, Inc., a \$200 million payment to the FTC. Additionally, the Company agreed to implement certain new procedures and enhance certain existing procedures in the U.S., most of which the Company had 10 months from the Effective Date to implement. Among other requirements, the Consent Order requires the Company to categorize all existing and future Members in the U.S. as either "preferred members" – who are simply consumers who only wish to purchase products for their own household use, or "distributors" – who are members who wish to resell some products or build a sales organization. The Company also agreed to compensate distributors on eligible U.S. sales within their downline organization, which include purchases by preferred members, purchases by a distributor for his or her personal consumption within allowable limits and sales of product by a distributor to his or her customers. The Consent Order also imposes restrictions on distributors' ability to open Nutrition Clubs in the United States. The Consent Order subjects the Company to certain audits by an independent compliance auditor for a period of seven years; imposes requirements on the Company regarding compliance certification and record creation and maintenance; and prohibits the Company, its affiliates and its distributors from making misrepresentations and misleading claims regarding, among other things, income and lavish lifestyles. The FTC and the independent compliance auditor have the right to inspect Company records and request additional compliance reports for purposes of conducting audits pursuant to the Consent Order. In September 2016, the Company and the FTC mutually selected Affiliated Monitors, Inc. to serve as the independent compliance auditor. The Company is monitoring the impact of the Consent Order and, while the Company currently does not expect the settlement to have a long-term and materially adverse impact on its business and its Member base, the Company's business and its Member base, particularly in the United States, may be negatively impacted as the Company and the Member base adjust to the changes. If the Company is unable to comply with the Consent Order then this could result in a material and adverse impact to the Company's results of operations and financial condition.

Other Matters

As a marketer of foods, dietary and nutritional supplements, and other products that are ingested by consumers or applied to their bodies, the Company has been and is currently subjected to various product liability claims. The effects of these claims to date have not been material to the Company. The Company currently maintains product liability insurance with an annual deductible of \$15 million.

The SEC and the Department of Justice have requested from the Company documents and other information relating to the Company's anti-corruption compliance in China and the Company is conducting its own review. The Company is cooperating with the government and cannot predict the eventual scope, duration, or outcome of the matter at this time.

Since late 2012, a short seller has made and continues to make allegations regarding the Company and its network marketing program. The Company believes these allegations are without merit and is vigorously defending itself against such claims, including proactively reaching out to governmental authorities about what the Company believes is manipulative activity with respect to its securities. Because of these allegations, the Company and others have received and may receive additional regulatory and governmental inquiries. For example, the Company has previously disclosed inquiries from the FTC, SEC and other governmental authorities. In the future, governmental authorities may determine to seek information from the Company and other persons relating to these same or other allegations. If the Company believes any governmental or regulatory inquiry or investigation is or becomes material it will be disclosed individually. Consistent with its policies, the Company has cooperated and will continue to fully cooperate with any governmental or regulatory inquiries or investigations.

These matters described in this Note may take several years to resolve. While the Company believes it has meritorious defenses, it cannot be sure of their ultimate resolution. Although the Company may reserve amounts for certain matters that the Company believes represent the most likely outcome of the resolution of these related disputes, if the Company is incorrect in its assessment, the Company may have to record additional expenses, when it becomes probable that an increased potential liability is warranted.

6. Segment Information

The Company is a nutrition company that sells a wide range of weight management, targeted nutrition, energy, sports & fitness, and outer nutrition products. The Company's products are manufactured by the Company in its Changsha, Hunan, China extraction facility, Suzhou, China facility, Nanjing, China facility, Lake Forest, California facility, and Winston-Salem, North Carolina facility, and by third party providers, and then are sold to Members who consume and sell Herbalife products to retail consumers or other Members. Revenues reflect sales of products by the Company to its Members and are categorized based on geographic location.

As of June 30, 2017, the Company sold products in 94 countries throughout the world and was organized into and managed through six geographic regions: North America, Mexico, South & Central America, EMEA (Europe, Middle East, and Africa), Asia Pacific and China. The Company defines its operating segments as those geographical operations. The Company aggregates its operating segments, excluding China, into a reporting segment, or the Primary Reporting Segment, as management believes that the Company's operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers to whom products are sold, the methods used to distribute the products, the nature of the regulatory environment, and their economic characteristics. China has been identified as a separate reporting segment as it does not meet the criteria for aggregation. The Company reviews its net sales and contribution margin by operating segment, and reviews its assets and capital expenditures on a consolidated basis and not by operating segment. Therefore, net sales and contribution margin are presented by reportable segment and assets and capital expenditures by segment are not presented.

The operating information for the two reportable segments are as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
(In millions)				
Net Sales:				
Primary Reporting Segment	\$ 904.2	\$ 959.3	\$ 1,790.8	\$ 1,861.5
China	242.7	242.5	458.2	459.9
Total Net Sales	<u>\$ 1,146.9</u>	<u>\$ 1,201.8</u>	<u>\$ 2,249.0</u>	<u>\$ 2,321.4</u>
Contribution Margin(1):				
Primary Reporting Segment	\$ 393.2	\$ 405.7	\$ 779.8	\$ 802.7
China(2)	216.0	223.1	411.8	420.7
Total Contribution Margin	609.2	628.8	1,191.6	1,223.4
Selling, general and administrative expenses(2)	443.2	676.8	881.8	1,103.9
Other operating income	(38.9)	(28.1)	(38.9)	(28.9)
Interest expense, net	37.9	23.1	68.1	48.0
Income (loss) before income taxes	167.0	(43.0)	280.6	100.4
Income taxes	29.4	(20.1)	57.8	27.5
Net income (loss)	<u>\$ 137.6</u>	<u>\$ (22.9)</u>	<u>\$ 222.8</u>	<u>\$ 72.9</u>

- (1) Contribution margin consists of net sales less cost of sales and royalty overrides. For the China segment, contribution margin does not include service fees to China independent service providers.
- (2) Service fees to China independent service providers totaling \$104.5 million and \$115.7 million for the three months ended June 30, 2017 and 2016, respectively, and \$216.1 million and \$218.2 million for the six months ended June 30, 2017 and 2016, respectively, are included in selling, general and administrative expenses.

The following table sets forth net sales by geographic area:

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
(In millions)				
Net Sales:				
United States	\$ 213.1	\$ 260.8	\$ 437.8	\$ 501.7
Mexico	115.6	119.3	220.4	229.0
China	242.7	242.5	458.2	459.9
Others	575.5	579.2	1,132.6	1,130.8
Total Net Sales	<u>\$ 1,146.9</u>	<u>\$ 1,201.8</u>	<u>\$ 2,249.0</u>	<u>\$ 2,321.4</u>

7. Share-Based Compensation

The Company has share-based compensation plans, which are more fully described in Note 9, *Share-Based Compensation*, to the Consolidated Financial Statements in the 2016 10-K. During the six months ended June 30, 2017, the Company granted stock appreciation rights, or SARs, and stock units subject to service conditions and service and performance conditions.

In June 2017, the Company granted stock unit awards to its Chief Executive Officer which will vest on December 31, 2019 subject to his continued employment through that date and the achievement of certain performance conditions. The performance conditions include targets for Volume Points, adjusted earnings before interest and taxes, and adjusted earnings per share. These performance stock unit awards can vest at between 0% and 200% of the target award based on the achievement of the performance conditions.

For the three months ended June 30, 2017 and 2016, share-based compensation expense amounted to \$11.4 million and \$10.7 million, respectively. For the six months ended June 30, 2017 and 2016, share-based compensation expense amounted to \$22.7 million and \$20.5 million, respectively. As of June 30, 2017, the total unrecognized compensation cost related to all non-vested stock awards was \$64.9 million and the related weighted-average period over which it is expected to be recognized is approximately 1.6 years.

The following tables summarize the activity under all share-based compensation plans for the six months ended June 30, 2017:

SARs	Awards	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term	Aggregate Intrinsic Value(1)
	(In thousands)			(In millions)
Outstanding at December 31, 2016(2)(3)	11,998	\$ 41.52	6.0 years	\$ 148.7
Granted	1,350	\$ 57.25		
Exercised	(2,421)	\$ 28.34		
Forfeited	(247)	\$ 50.98		
Outstanding at June 30, 2017(2)(3)	<u>10,680</u>	\$ 46.28	6.5 years	\$ 275.1
Exercisable at June 30, 2017(4)	<u>6,337</u>	\$ 45.56	5.1 years	\$ 170.9

- (1) The intrinsic value is the amount by which the current market value of the underlying stock exceeds the exercise price of the stock awards.
- (2) Includes 0.1 million market condition SARs as of both June 30, 2017 and December 31, 2016.
- (3) Includes 3.1 million and 2.9 million performance condition SARs as of June 30, 2017 and December 31, 2016, respectively.
- (4) Includes 1.5 million performance condition SARs.

The weighted-average grant date fair value of SARs granted during the threemonths ended June 30, 2017 and 2016 was \$34.76 and \$29.77, respectively. The weighted-average grant date fair value of SARs granted during the six months ended June 30, 2017 and 2016 was \$28.34 and \$29.47, respectively. The total intrinsic value of SARs exercised during the three months ended June 30, 2017 and 2016 was \$80.2 million and \$8.2 million, respectively. The total intrinsic value of SARs exercised during the six months ended June 30, 2017 and 2016 was \$97.0 million and \$14.1 million, respectively.

Incentive Plan and Independent Directors Stock Units	Shares	Weighted Average Grant Date Fair Value
	(In thousands)	
Outstanding and nonvested December 31, 2016	26	\$ 62.35
Granted(1)	112	\$ 70.14
Vested	(24)	\$ 62.45
Forfeited	—	\$ —
Outstanding and nonvested June 30, 2017	<u>114</u>	<u>\$ 69.98</u>

(1) This includes 91,610 performance based stock unit awards which represents the maximum amount that can vest.

The total vesting date fair value of stock units which vested during the three months ended June 30, 2017 and 2016 was \$1.4 million and \$1.8 million, respectively. The total vesting date fair value of stock units which vested during the six months ended June 30, 2017 and 2016 was \$1.4 million and \$1.8 million, respectively.

8. Income Taxes

Income taxes were an expense of \$29.4 million and \$57.8 million for the three and six months ended June 30, 2017, respectively, as compared to a benefit of \$20.1 million and an expense of \$27.5 million for the same periods in 2016. The effective income tax rate was 17.6% and 20.6% for the three and six months ended June 30, 2017, respectively, as compared to 46.7% and 27.4% for the same periods in 2016. The decrease in the effective tax rate for the three months ended June 30, 2017, as compared to the same period in 2016, was due to the change in the geographic mix of the Company's income, primarily related to the FTC settlement and to an increase in net benefits from discrete events. The decrease in the effective tax rate for the six months ended June 30, 2017, as compared to the same period in 2016, was primarily due to an increase in net benefits from discrete events. Included in the discrete events for the three and six months ended June 30, 2017 was the impact of \$21.4 million and \$25.7 million of excess tax benefits generated during those respective periods, relating to the Company's application of ASU 2016-09 that was adopted on January 1, 2017.

As of June 30, 2017, the total amount of unrecognized tax benefits, including related interest and penalties was \$72.7 million. If the total amount of unrecognized tax benefits was recognized, \$52.4 million of unrecognized tax benefits, \$11.3 million of interest and \$2.3 million of penalties would impact the effective tax rate.

The Company believes that it is reasonably possible that the amount of unrecognized tax benefits could decrease by up to approximately \$11.1 million within the next twelve months. Of this possible decrease, \$4.0 million would be due to the settlement of audits or resolution of administrative or judicial proceedings. The remaining possible decrease of \$7.1 million would be due to the expiration of statute of limitations in various jurisdictions. For a description on contingency matters relating to income taxes see Note 5, *Contingencies*.

9. Derivative Instruments and Hedging Activities

Foreign Currency Instruments

The Company designates certain foreign currency derivatives, primarily comprised of foreign currency forward contracts, as freestanding derivatives for which hedge accounting does not apply. The changes in the fair market value of these freestanding derivatives are included in selling, general and administrative expenses in the Company's condensed consolidated statements of income (loss). The Company uses freestanding foreign currency derivatives to hedge foreign-currency-denominated intercompany transactions and to partially mitigate the impact of foreign currency fluctuations. The fair value of the freestanding foreign currency derivatives is based on third-party quotes. The Company's foreign currency derivative contracts are generally executed on a monthly basis.

The Company designates as cash-flow hedges those foreign currency forward contracts it enters into to hedge forecasted inventory purchases and intercompany management fees that are subject to foreign currency exposures. Forward contracts are used to hedge forecasted inventory purchases over specific months. Changes in the fair value of these forward contracts, excluding forward points, designated as cash-flow hedges are recorded as a component of accumulated other comprehensive income (loss) within shareholders' equity, and are recognized in cost of sales in the condensed consolidated statements of income (loss) during the period which approximates the time the hedged inventory is sold. The Company also hedges forecasted intercompany management fees over specific months. These contracts allow the Company to sell Euros in exchange for U.S. dollars at specified contract rates. Changes in the fair value of these forward contracts designated as cash flow hedges are recorded as a component of accumulated other comprehensive income (loss) within shareholders' equity, and are recognized in selling, general and administrative expenses in the condensed consolidated statements of income (loss) during the period when the hedged item and underlying transaction affect earnings.

As of June 30, 2017 and December 31, 2016, the aggregate notional amounts of all foreign currency contracts outstanding designated as cash flow hedges were approximately \$126.9 million and \$90.0 million, respectively. At June 30, 2017, these outstanding contracts were expected to mature over the next fifteen months. The Company's derivative financial instruments are recorded on the condensed consolidated balance sheet at fair value based on third-party quotes. As of June 30, 2017, the Company recorded assets at fair value of \$0.1 million and liabilities at fair value of \$5.9 million relating to all outstanding foreign currency contracts designated as cash-flow hedges. As of December 31, 2016, the Company recorded assets at fair value of \$4.6 million. The Company assesses hedge effectiveness and measures hedge ineffectiveness at least quarterly. During the three and six months ended June 30, 2017 and 2016, the ineffective portion relating to these hedges was immaterial and the hedges remained effective as of June 30, 2017 and December 31, 2016.

As of June 30, 2017 and December 31, 2016, the majority of the Company's outstanding foreign currency forward contracts had maturity dates of less than twelve months with the majority of freestanding derivatives expiring within two months and one month as of June 30, 2017 and December 31, 2016, respectively. As of June 30, 2017, the Company had aggregate notional amounts of approximately \$395.0 million of foreign currency contracts, inclusive of freestanding contracts and contracts designated as cash flow hedges.

Gains and Losses on Derivative Instruments

The following table summarizes gains (losses) relating to derivative instruments recorded in other comprehensive income (loss) during the three and six months ended June 30, 2017 and 2016:

	Amount of Gain (Loss) Recognized in Other Comprehensive Income (Loss)			
	For the Three Months Ended		For the Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
	(In millions)			
Derivatives designated as hedging instruments:				
Foreign exchange currency contracts relating to inventory and intercompany management fee hedges	\$ (4.4)	\$ 3.2	\$ (10.5)	\$ 2.3

As of June 30, 2017, the estimated amount of existing net losses related to cash flow hedges recorded in accumulated other comprehensive loss that are expected to be reclassified into earnings over the next twelve months was \$6.8 million.

The following table summarizes gains (losses) relating to derivative instruments recorded to income during the three and six months ended June 30, 2017 and 2016:

	Location of Gain (Loss) Recognized in Income	Amount of Gain (Loss) Recognized in Income			
		For the Three Months Ended		For the Six Months Ended	
		June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
(In millions)					
Derivatives designated as hedging instruments:					
Foreign exchange currency contracts relating to inventory hedges and intercompany management fee hedges(1)	Selling, general and administrative expenses	\$ 1.7	\$ 0.5	\$ 1.2	\$ 0.1
Derivatives not designated as hedging instruments:					
Foreign exchange currency contracts	Selling, general and administrative expenses	\$ (5.2)	\$ (0.9)	\$ (6.5)	\$ (3.2)

(1) For foreign exchange contracts designated as hedging instruments, the amounts recognized in income primarily represent the amounts excluded from the assessment of hedge effectiveness. There were no material ineffective amounts reported for derivatives designated as hedging instruments.

The following table summarizes gains (losses) relating to derivative instruments reclassified from accumulated other comprehensive loss into income during the three and six months ended June 30, 2017 and 2016:

	Location of Gain (Loss) Reclassified from Accumulated Other Comprehensive Loss into Income (Effective Portion)	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Loss into Income			
		For the Three Months Ended		For the Six Months Ended	
		June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
(In millions)					
Derivatives designated as hedging instruments:					
Foreign exchange currency contracts relating to inventory hedges	Cost of sales	\$ 0.7	\$ 4.6	\$ 1.6	\$ 9.6
Foreign exchange currency contracts relating to intercompany management fee hedges	Selling, general and administrative expenses	\$ 0.4	\$ (0.4)	\$ 0.9	\$ (0.5)

The Company reports its derivatives at fair value as either assets or liabilities within its condensed consolidated balance sheet. See Note 12 *Fair Value Measurements*, for information on derivative fair values and their condensed consolidated balance sheet location as of June 30, 2017 and December 31, 2016.

10. Shareholders' Equity

Dividends

The declaration of future dividends is subject to the discretion of the Company's board of directors and will depend upon various factors, including its earnings, financial condition, Herbalife Ltd.'s available distributable reserves under Cayman Islands law, restrictions imposed by the Credit Facility and the terms of any other indebtedness that may be outstanding, cash requirements, future prospects and other factors deemed relevant by its board of directors.

Share Repurchases

On February 21, 2017, the Company's board of directors authorized a new three-year \$1.5 billion share repurchase program that will expire on February 21, 2020, which replaced the Company's prior share repurchase authorization which was set to expire on June 30, 2017 which, as of December 31, 2016, had \$232.9 million of remaining authorized capacity. This share repurchase program allows the Company, which includes an indirect wholly owned subsidiary of Herbalife Ltd., to repurchase the Company's common shares, at such times and prices as determined by the Company's management as market conditions warrant and to the extent Herbalife Ltd.'s distributable reserves are available under Cayman Islands law. The Credit Facility permits the Company to repurchase its common shares as long as no default or event of default exists and other conditions such as specified consolidated leverage ratios are met.

In conjunction with the issuance of the Convertible Notes during February 2014, the Company paid approximately \$685.8 million to enter into prepaid forward share repurchase transactions, or the Forward Transactions, with certain financial institutions, or the Forward Counterparties, pursuant to which the Company purchased approximately 9.9 million common shares, at an average cost of \$69.02 per share, for settlement on or around the August 15, 2019 maturity date for the Convertible Notes, subject to the ability of each Forward Counterparty to elect to settle all or a portion of its Forward Transactions early. See Note 4, *Long-Term Debt* for further information on the conditions for which Holders of the Convertible Notes may convert their notes prior to the maturity date. The Forward Transactions were generally expected to facilitate privately negotiated derivative transactions between the Forward Counterparties and holders of the Convertible Notes, including swaps, relating to the common shares by which holders of the Convertible Notes establish short positions relating to the common shares and otherwise hedge their investments in the Convertible Notes concurrently with, or shortly after, the pricing of the Convertible Notes. The shares are treated as retired shares for basic and diluted EPS purposes although they remain legally outstanding.

As a result of the Forward Transactions, the Company's total shareholders' equity within its condensed consolidated balance sheet was reduced by approximately \$685.8 million during the first quarter of 2014, with amounts of \$653.9 million and \$31.9 million being allocated between accumulated deficit and additional paid-in-capital, respectively, within total shareholders' equity. Also, upon executing the Forward Transactions, the Company recorded, at fair value, \$35.8 million in non-cash issuance costs to other assets and a corresponding amount to additional paid-in-capital within its condensed consolidated balance sheet. These non-cash issuance costs will be amortized to interest expense over the contractual term of the Forward Transactions. For both the three and six months ended June 30, 2017 and 2016, the Company recognized \$1.6 million and \$3.2 million, respectively, of non-cash interest expense within its condensed consolidated statements of income (loss) relating to amortization of these non-cash issuance costs.

During the three months ended March 31, 2017, an indirect wholly owned subsidiary of the Company purchased approximately 1.1 million of Herbalife Ltd.'s common shares through open market purchases at an aggregate cost of approximately \$60.7 million, or an average cost of \$56.10 per share, which reduced the Company's total shareholders' equity and is reflected at cost within the Company's accompanying condensed consolidated balance sheet. During the three months ended June 30, 2017, an indirect wholly owned subsidiary of the Company purchased approximately 2.7 million of Herbalife Ltd.'s common shares through open market purchases at an aggregate cost of approximately \$179.8 million, or an average cost of \$67.06 per share, which reduced the Company's total shareholders' equity and is reflected at cost within the Company's accompanying condensed consolidated balance sheet. Although these shares are owned by an indirect wholly owned subsidiary of the Company, they are reflected as treasury shares under U.S. GAAP and therefore reduce the number of common shares outstanding within the Company's condensed consolidated financial statements and the weighted-average number of common shares outstanding used in calculating earnings per share. The common shares of Herbalife Ltd. held by the indirect wholly owned subsidiary, however, remain outstanding on the books and records of the Company's transfer agent and therefore still carry voting and other share rights related to ownership of the Company's common shares, which may be exercised. As of June 30, 2017, the Company held approximately 3.8 million of treasury shares for U.S. GAAP purposes. The Company did not repurchase any common shares in the open market during the three and six months ended June 30, 2016. As of June 30, 2017, the remaining authorized capacity under the Company's \$1.5 billion share repurchase program was \$1,259.5 million.

The number of shares issued upon vesting or exercise for certain restricted stock units and SARs granted pursuant to the Company's share-based compensation plans is net of the statutory withholding requirements that the Company pays on behalf of its employees. Although shares withheld are not issued, they are treated as common share repurchases in the Company's condensed consolidated financial statements and reduce the Company's additional paid-in-capital within total shareholders' equity and are reflected as share repurchases on the Company's condensed consolidated statements of cash flows as they reduce the number of shares that would have been issued upon vesting. These shares do not count against the authorized capacity under the Company's share repurchase program described above.

For the six months ended June 30, 2017 and 2016, the Company's share repurchases were \$40.5 million and none, respectively, under the Company's share repurchase programs and \$45.7 million and \$4.5 million, respectively, due to shares withheld for tax purposes related to the Company's share-based compensation plans. For the six months ended June 30, 2017 and 2016, the Company's total share repurchases, including shares withheld for tax purposes, were \$86.2 million and \$4.5 million, respectively, and have been recorded as a reduction to shareholders' equity within the Company's condensed consolidated balance sheet. The Company recorded \$273.6 million of total share repurchases within financing activities on its condensed consolidated statement of cash flows for the six months ended June 30, 2017, which excludes \$12.6 million of share repurchases for which payment was made subsequent to the quarter end and therefore reflected as a liability within the Company's condensed consolidated balance sheet as of June 30, 2017.

Capped Call Transactions

In February 2014, in connection with the issuance of Convertible Notes, the Company paid approximately \$123.8 million to enter into capped call transactions with respect to its common shares, or the Capped Call Transactions, with certain financial institutions. The Capped Call Transactions are expected generally to reduce the potential dilution upon conversion of the Convertible Notes in the event that the market price of the common shares is greater than the strike price of the Capped Call Transactions, initially set at \$86.28 per common share, with such reduction of potential dilution subject to a cap based on the cap price initially set at \$120.79 per common share. The strike price and cap price are subject to certain adjustments under the terms of the Capped Call Transactions. Therefore, as a result of executing the Capped Call Transactions, the Company in effect will only be exposed to potential net dilution once the market price of its common shares exceeds the adjusted cap price. As a result of the Capped Call Transactions, the Company's additional paid-in capital within shareholders' equity on its condensed consolidated balance sheet was reduced by \$123.8 million during the first quarter of 2014.

Accumulated Other Comprehensive Income (Loss)

The following table summarizes changes in accumulated other comprehensive income (loss) during the three months ended June 30, 2017 and 2016:

	Changes in Accumulated Other Comprehensive					
	Income (Loss) by Component					
	Three Months Ended June 30,					
	2017			2016		
	Foreign Currency Translation Adjustments	Unrealized Gain (Loss) on Derivatives	Total	Foreign Currency Translation Adjustments	Unrealized Gain (Loss) on Derivatives	Total
	(In millions)					
Beginning Balance	\$ (192.5)	\$ 2.9	\$ (189.6)	\$ (163.0)	\$ 11.8	\$ (151.2)
Other comprehensive income (loss) before reclassifications, net of tax	6.7	(4.4)	2.3	(15.8)	3.3	(12.5)
Amounts reclassified from accumulated other comprehensive income (loss) to income, net of tax(1)	—	(1.1)	(1.1)	—	(4.8)	(4.8)
Total other comprehensive income (loss), net of reclassifications	6.7	(5.5)	1.2	(15.8)	(1.5)	(17.3)
Ending balance	\$ (185.8)	\$ (2.6)	\$ (188.4)	\$ (178.8)	\$ 10.3	\$ (168.5)

(1) See Note 9, *Derivative Instruments and Hedging Activities*, for information regarding the location in the condensed consolidated statements of income (loss) of gains (losses) reclassified from accumulated other comprehensive income (loss) into income during the three months ended June 30, 2017 and 2016.

Other comprehensive income (loss) before reclassifications was net of tax expense of \$2.7 million for foreign currency translation adjustment for the three months ended June 30, 2017.

Other comprehensive income (loss) before reclassifications was net of tax expense of \$2.3 million and tax benefits of \$0.1 million for foreign currency translation adjustment and unrealized gain (loss) on derivatives, respectively, for the three months ended June 30, 2016.

The following table summarizes changes in accumulated other comprehensive income (loss) during the six months ended June 30, 2017 and 2016:

	Changes in Accumulated Other Comprehensive						
	Income (Loss) by Component						
	2017			2016			
	Foreign Currency Translation Adjustments	Unrealized Gain (Loss) on Derivatives	Total	Foreign Currency Translation Adjustments	Unrealized Gain (Loss) on Derivatives	Other	Total
	(In millions)						
Beginning Balance	\$ (215.5)	\$ 10.4	\$ (205.1)	\$ (183.0)	\$ 17.4	\$ 0.1	\$ (165.5)
Other comprehensive income (loss) before reclassifications, net of tax	29.7	(10.5)	19.2	4.2	2.5	—	6.7
Amounts reclassified from accumulated other comprehensive income (loss) to income, net of tax(1)	—	(2.5)	(2.5)	—	(9.6)	(0.1)	(9.7)
Total other comprehensive income (loss), net of reclassifications	29.7	(13.0)	16.7	4.2	(7.1)	(0.1)	(3.0)
Ending balance	\$ (185.8)	\$ (2.6)	\$ (188.4)	\$ (178.8)	\$ 10.3	\$ —	\$ (168.5)

(1) See Note 9, *Derivative Instruments and Hedging Activities*, for information regarding the location in the condensed consolidated statements of income (loss) of gains (losses) reclassified from accumulated other comprehensive income (loss) into income during the six months ended June 30, 2017 and 2016.

Other comprehensive income (loss) before reclassifications was net of tax expense of \$5.3 million for foreign currency translation adjustment for the six months ended June 30, 2017.

Other comprehensive income (loss) before reclassifications was net of tax expense of \$1.5 million and tax benefits of \$0.3 million for foreign currency translation adjustment and unrealized gain (loss) on derivatives, respectively, for the six months ended June 30, 2016. Amounts reclassified from other comprehensive income (loss) to income were net of tax expense of \$0.1 million for other for the six months ended June 30, 2016.

11. Earnings Per Share

Basic earnings per share represents net income divided by the weighted average number of common shares outstanding for the period. Diluted earnings per share represents net income divided by the weighted average number of common shares outstanding, inclusive of the effect of dilutive securities such as outstanding SARs and stock units.

The following are the common share amounts used to compute the basic and diluted earnings per share for each period:

	For the Three Months Ended June 30,		For the Six Months Ended June 30,	
	2017	2016	2017	2016
	(in millions)			
Weighted average shares used in basic computations	81.4	83.0	82.3	82.9
Dilutive effect of exercise of equity grants outstanding	3.9	—	3.7	3.0
Weighted average shares used in diluted computations	85.3	83.0	86.0	85.9

There were an aggregate of 3.3 million and 3.6 million of equity grants, consisting of SARs, and stock units that were outstanding during the three and six months ended June 30, 2017, respectively, and an aggregate of 13.0 million and 4.9 million of equity grants, consisting of SARs and stock units, that were outstanding during the three and six months ended June 30, 2016, respectively, but were not included in the computation of diluted earnings per share because their effect would be anti-dilutive or the performance condition for the award had not been satisfied. The Company had a net loss during the three months ended June 30, 2016, therefore all outstanding equity grants were excluded from the calculation of diluted earnings per share for the three months ended June 30, 2016 as their inclusion would have an antidilutive effect.

Since the Company will settle the principal amount of its Convertible Notes in cash and settle the conversion feature for the amount above the conversion price in common shares, or the conversion spread, the Company uses the treasury stock method for calculating any potential dilutive effect of the conversion spread on diluted earnings per share, if applicable. The conversion spread will have a dilutive impact on diluted earnings per share when the average market price of the Company's common shares for a given period exceeds the initial conversion price of \$86.28 per share. For the three and six months ended June 30, 2017 and 2016, the Convertible Notes have been excluded from the computation of diluted earnings per share as the effect would be anti-dilutive since the conversion price of the Convertible Notes exceeded the average market price of the Company's common shares for the three and six months ended June 30, 2017 and 2016. The initial conversion rate and conversion price is described further in Note 4, *Long-Term Debt*.

The Capped Call Transactions are excluded from the calculation of diluted earnings per share because their impact is always anti-dilutive.

See Note 10, *Shareholders' Equity*, for a discussion of how common shares repurchased by the Company's indirect wholly owned subsidiary are treated under U.S. GAAP.

12. Fair Value Measurements

The Company applies the provisions of the FASB Accounting Standards Codification, or ASC, Topic 820, *Fair Value Measurements and Disclosures*, or ASC 820, for its financial and non-financial assets and liabilities. ASC 820 defines fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. ASC 820 establishes a fair value hierarchy, which prioritizes the inputs used in measuring fair value into three broad levels as follows:

Level 1 inputs are quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity has the ability to access at the measurement date.

Level 2 inputs include quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the asset or liability and inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3 inputs are unobservable inputs for the asset or liability.

The Company measures certain assets and liabilities at fair value as discussed throughout the notes to its condensed consolidated financial statements. Foreign exchange currency contracts are valued using standard calculations and models primarily based on inputs such as observable forward rates, spot rates and foreign currency exchange rates at the reporting period ended date. The Company's derivative assets and liabilities are measured at fair value and consisted of Level 2 inputs and their amounts are shown below at their gross values at June 30, 2017 and December 31, 2016:

Fair Value Measurements at Reporting Date

Derivative Balance Sheet Location	Significant Other Observable Inputs (Level 2) Fair Value at June 30, 2017	Significant Other Observable Inputs (Level 2) Fair Value at December 31, 2016
(in millions)		
ASSETS:		
Derivatives designated as hedging instruments:		
Foreign exchange currency contracts relating to inventory and intercompany management fee hedges	Prepaid expenses and other current assets	\$ 0.1 \$ 4.6
Derivatives not designated as hedging instruments:		
Foreign exchange currency contracts	Prepaid expenses and other current assets	\$ 2.5 \$ 2.8
	<u>\$ 2.6</u>	<u>\$ 7.4</u>
LIABILITIES:		
Derivatives designated as hedging instruments:		
Foreign exchange currency contracts relating to inventory and intercompany management fee hedges	Other current liabilities	\$ 5.9 \$ —
Derivatives not designated as hedging instruments:		
Foreign exchange currency contracts	Other current liabilities	\$ 2.6 \$ 3.5
	<u>\$ 8.5</u>	<u>\$ 3.5</u>

The Company considers all highly liquid investments purchased with a maturity of three months or less to be cash equivalents. Cash and cash equivalents are comprised of money market funds and foreign and domestic bank accounts. These cash and cash equivalents are valued based on level 1 inputs which consist of quoted prices in active markets. To reduce its credit risk, the Company monitors the credit standing of the financial institutions that hold the Company's cash and cash equivalents.

The Company's deferred compensation plan assets consist of Company owned life insurance policies. As these policies are recorded at their cash surrender value, they are not required to be included in the fair value table above. See Note 6, *Employee Compensation Plans*, to the consolidated financial statements included in the 2016 10-K for a further description of the Company's deferred compensation plan assets.

The following tables summarize the offsetting of the fair values of the Company's derivative assets and derivative liabilities for presentation in the Company's condensed consolidated balance sheet at June 30, 2017 and December 31, 2016:

Offsetting of Derivative Assets			
	Gross Amounts of Recognized Assets	Gross Amounts Offset in the Balance Sheet	Net Amounts of Assets Presented in the Balance Sheet
(In millions)			
June 30, 2017			
Foreign exchange currency contracts	\$ 2.6	\$ (2.6)	\$ —
Total	<u>\$ 2.6</u>	<u>\$ (2.6)</u>	<u>\$ —</u>
December 31, 2016			
Foreign exchange currency contracts	\$ 7.4	\$ (3.0)	\$ 4.4
Total	<u>\$ 7.4</u>	<u>\$ (3.0)</u>	<u>\$ 4.4</u>
Offsetting of Derivative Liabilities			
	Gross Amounts of Recognized Liabilities	Gross Amounts Offset in the Balance Sheet	Net Amounts of Liabilities Presented in the Balance Sheet
(In millions)			
June 30, 2017			
Foreign exchange currency contracts	\$ 8.5	\$ (2.6)	\$ 5.9
Total	<u>\$ 8.5</u>	<u>\$ (2.6)</u>	<u>\$ 5.9</u>
December 31, 2016			
Foreign exchange currency contracts	\$ 3.5	\$ (3.0)	\$ 0.5
Total	<u>\$ 3.5</u>	<u>\$ (3.0)</u>	<u>\$ 0.5</u>

The Company offsets all of its derivative assets and derivative liabilities in its condensed consolidated balance sheet to the extent it maintains master netting arrangements with related financial institutions. As of June 30, 2017 and December 31, 2016, all of the Company's derivatives were subject to master netting arrangements and no collateralization was required for the Company's derivative assets and derivative liabilities.

13. Detail of Certain Balance Sheet Accounts

Other Assets

The Other assets on the Company's accompanying condensed consolidated balance sheets includes deferred compensation plan assets of \$32.0 million and \$30.6 million and long-term deferred tax assets of \$186.1 million and \$155.2 million as of June 30, 2017 and December 31, 2016, respectively.

Other Current Liabilities

Other current liabilities consist of the following:

	June 30, 2017	December 31, 2016
(In millions)		
Accrued compensation	\$ 97.0	\$ 125.8
Accrued liabilities	239.0	236.9
Advance sales deposits	77.0	50.1
Income taxes payable	12.1	42.0
Total	<u>\$ 425.1</u>	<u>\$ 454.8</u>

Other Non-Current Liabilities

The Other non-current liabilities on the Company's accompanying condensed consolidated balance sheets includes deferred compensation plan liabilities of \$53.8 million and \$50.0 million and deferred income tax liabilities of \$15.5 million and \$15.3 million as of June 30, 2017 and December 31, 2016, respectively. See Note 6, *Employee Compensation Plans*, to the consolidated financial statements in the 2016 10-K for a further description of the Company's deferred compensation plan assets and liabilities.

14. Subsequent Events

During July 2017, an indirect wholly owned subsidiary of the Company repurchased approximately 0.8 million of the Company's common shares for aggregate consideration of approximately \$58.7 million through open market purchases under the Company's \$1.5 billion share repurchase program. These repurchases were effected pursuant to Rule 10b5-1 trading plans. See Note 10, *Shareholders' Equity*, for a discussion of how common shares repurchased by the Company's indirect wholly owned subsidiary are treated under U.S. GAAP.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and related notes included in Part I, Item 1 – *Financial Information*, of this Quarterly Report on Form 10-Q and our consolidated financial statements appearing in our Annual Report on Form 10-K for the year ended December 31, 2016, or the 2016 10-K. Unless the context otherwise requires, all references herein to the “Company,” “we,” “us” or “our,” or similar terms, refer to Herbalife Ltd., a Cayman Islands exempt limited liability company, and its consolidated subsidiaries.

Overview

We are a global nutrition company that sells weight management, targeted nutrition, energy, sports & fitness, and outer nutrition products to and through independent members, or Members. In China, we sell our products to and through independent service providers, sales representatives, and sales officers to customers and preferred customers, as well as through Company-operated retail stores when necessary. We refer to Members that distribute our products and achieve certain qualification requirements as “sales leaders.”

We pursue our mission of “changing people’s lives” by providing high quality, science-based products to Members and their customers who seek a healthy lifestyle and we also offer a business opportunity to those Members who seek additional income. We believe the global obesity epidemic has made our quality products more relevant and the effectiveness of our distribution network, coupled with geographic expansion, have been the primary reasons for our success throughout our 37-year operating history.

Our products are grouped in four principal categories: weight management; targeted nutrition; energy, sports & fitness; and outer nutrition, along with literature and promotional items. Our products are often sold through a series of related products and literature designed to simplify weight management and nutrition for consumers and maximize our Members’ cross-selling opportunities.

Industry-wide factors that affect us and our competitors include the global obesity epidemic, the aging of the worldwide population and rising public health care costs, which are driving demand for weight management, nutrition and wellness-related products along with the global increase in under employment and unemployment which can affect the recruitment and retention of Members seeking additional income opportunities.

While we continue to monitor the current global financial environment, we remain focused on the opportunities and challenges in retailing of our products, sponsoring and retaining Members, improving Member productivity, further penetrating existing markets, opening new markets, globalizing successful Distributor Methods of Operation, or DMOs, such as Nutrition Clubs and Weight Loss Challenges, introducing new products and globalizing existing products, developing niche market segments and further investing in our infrastructure.

We report revenue from our six regions:

- North America;
- Mexico;
- South and Central America;
- EMEA, which consists of Europe, the Middle East and Africa;
- Asia Pacific (excluding China); and
- China.

On July 15, 2016, we reached a settlement with the U.S. Federal Trade Commission, or the FTC, and entered into a proposed Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment, or the Consent Order, which resolved the FTC's multi-year investigation of the Company. The Consent Order became effective on July 25, 2016, or the Effective Date, upon final approval by the U.S. District Court for the Central District of California. Pursuant to the Consent Order, we agreed to implement certain new procedures and enhance certain existing procedures in the U.S., most of which we had 10 months from the Effective Date to implement. Among other requirements, the Consent Order required us to categorize all existing and future Members in the U.S. as either "preferred members" - who are simply consumers who only wish to purchase product for their own household use, or "distributors" - who are Members who wish to resell some products or build a sales organization. We also agreed to compensate distributors on eligible U.S. sales within their downline organizations, which include purchases by preferred members, purchases by a distributor for his or her personal consumption within allowable limits and sales of product by a distributor to his or her customers. The Consent Order also requires distributors to meet certain conditions before opening Nutrition Clubs and/or entering into leases for their Herbalife business in the United States. The Consent Order also prohibits the Company from making expressly or by implication, any representation regarding the amount or level of income, including full-time or part-time income, that a participant can reasonably expect to earn in the Company's network marketing program, unless the representation is non-misleading and the Company possesses competent and reliable evidence sufficient to substantiate that the representation is true.

We are monitoring the impact of the Consent Order and our Board of Directors has established the Implementation Oversight Committee in connection with the Consent Order. The committee has met and will meet regularly with management to oversee our compliance with the terms of the Consent Order. While we currently do not expect the settlement to have a long-term and materially adverse impact on our business and our Member base, our business and our Member base, particularly in the U.S., may be negatively impacted as we and they adjust to the changes. The terms of the settlement do not change our going to market through direct selling by independent distributors, and compensating those distributors based upon the product they and their sales organization sell. See Item 1A - *Risk Factors* of this Quarterly Report on Form 10-Q for a discussion of risks related to the settlement with the FTC.

Volume Points by Geographic Region

A key non-financial measure we focus on is Volume Points on a Royalty Basis, or Volume Points, which is essentially our weighted-average measure of product sales volume. Volume Points, which are unaffected by exchange rates or price changes, are used by management as a proxy for sales trends because in general, excluding the impact of price changes, an increase in Volume Points in a particular geographic region or country indicates an increase in our local currency net sales while a decrease in Volume Points in a particular geographic region or country indicates a decrease in our local currency net sales. The criteria we use to determine how and when we recognize Volume Points are not identical to our revenue recognition policies under U.S. GAAP. Unlike net sales, which are generally recognized when the product is delivered and both the title and risk and rewards pass to the Member, as discussed in greater detail in the 2016 10-K, we recognize Volume Points when a Member pays for the order, which is generally prior to the product being delivered. Further, the periods in which Volume Points are tracked can vary slightly from the fiscal periods for which we report our results under U.S. GAAP. Therefore, there can be timing differences between the product orders for which net sales are recognized and for which Volume Points are recognized within a given period. However, historically these timing differences generally have been immaterial in the context of using changes in Volume Points as a proxy to explain volume-driven changes in net sales.

We assign a Volume Point value to a product when it is first introduced into a market and the value is unaffected by subsequent exchange rate and price changes. The specific number of Volume Points assigned to a product, and generally consistent across all markets, is based on a Volume Point to suggested retail price ratio for similar products. If a product is available in different quantities, the various sizes will have different Volume Point values. In general, once assigned, a Volume Point value is consistent in each region and country and does not change from year to year. The reason Volume Points are used in the manner described above is that we use Volume Points for Member qualification and recognition purposes and therefore we attempt to keep Volume Points for a similar or like product consistent on a global basis. However, because Volume Points are a function of value rather than product type or size, they are not a reliable measure for product mix. As an example, an increase in Volume Points in a specific country or region could mean a significant increase in sales of less expensive products or a marginal increase in sales of more expensive products.

	Three Months Ended June 30,			Six Months Ended June 30,		
	2017	2016	% Change	2017	2016	% Change
	(Volume Points in millions)					
North America	284.1	347.0	(18.1)%	586.7	666.5	(12.0)%
Mexico	228.9	242.6	(5.6)%	454.4	458.6	(0.9)%
South & Central America	137.5	160.3	(14.2)%	290.7	338.1	(14.0)%
EMEA	283.6	276.9	2.4%	557.8	537.6	3.8%
Asia Pacific (excluding China)	275.9	277.8	(0.7)%	536.7	527.3	1.8%
China	153.9	179.7	(14.4)%	335.9	334.9	0.3%
Worldwide	<u>1,363.9</u>	<u>1,484.3</u>	(8.1)%	<u>2,762.2</u>	<u>2,863.0</u>	(3.5)%

We believe the decrease in worldwide Volume Points for the three and six months ended June 30, 2017 of 8.1% and 3.5%, respectively, versus increases reported for the prior year periods, were driven by regional specific factors. Longer term, favorable Volume Point growth trends have been attributable to our facilitation of sales leader success and customer satisfaction by providing quality products and emphasizing sustainable business; improved DMOs, including daily consumption approaches such as Nutrition Clubs; easier access to product; systemized training for Members on our products and methods; and continued promotion and branding of Herbalife products. The decreases for North America for the three and six months ended June 30, 2017, following increases in the prior year periods, reflects Member focus on FTC settlement implementation actions including training on new tools and methods for documenting sales, and time spent to then train their sales organizations. The decrease for Mexico for the three months ended June 30, 2017, and to a lesser extent the six months ended June 30, 2017, reflects, among other factors, a difficult comparison with Q2 2016, the highest volume quarter in Mexico history, as well as tougher economic conditions. We continue to see declines in the South & Central America region primarily as a result of regional and country specific challenges discussed in greater detail in Sales by Geographic Region below. Asia Pacific (excluding China) has had mixed results by country within the region, as discussed in greater detail in Sales by Geographic Region below. The Volume Point decline in China for the three months ended June 30, 2017, is due to member response to a price increase announced in March that was effective April 1, 2017. This price increase announcement, our first for the market in six years, drove significant sales orders late in March, including orders that were pulled forward from the second quarter, as Members made purchases ahead of the price change. For the six months ended June 30, 2017, we saw a lower rate of increase than recent prior year periods, attributable to factors such as Members testing new business methods that did not prove to be as sustainable as traditional methods. Sales volume results are discussed further below in the applicable sections of Sales by Geographic Region. We believe the changes to our Marketing Plan, as well as our competitive strengths and business strategies, each of which is discussed in greater detail in Item 1 — *Business* of the 2016 10-K, will contribute to achieving our long-term objective of sustainable sales growth through retailing, recruiting and retention.

Number of Sales Leaders and Retention Rates by Geographic Region as of Re-qualification Period

Our compensation system requires each sales leader to re-qualify for such status each year, prior to February, in order to maintain their 50% discount on products and be eligible to receive royalty payments. In February of each year, we demote from the rank of sales leader those Members who did not satisfy the re-qualification requirements during the preceding twelve months. The re-qualification requirement does not apply to new sales leaders (i.e. those who became sales leaders subsequent to the January re-qualification of the prior year). Volume Points are the basis for sales leader qualification, as discussed in greater detail in Item 1, *Business* of the 2016 10-K. Typically, a Member accumulates Volume Points for a given sale at the time the Member pays for the product. However, effective beginning in May 2017, a Member does not receive Volume Point credit for a transaction in the United States until it is documented in compliance with the Consent Order.

For the latest twelve month re-qualification period ending January 2017, approximately 60.9% of our sales leaders, excluding China and Venezuela, re-qualified. This figure excludes sales leaders in the United States who had converted to preferred member prior to the re-qualification period-end, as those individuals were not eligible for requalification; had these individuals been included in the calculation the figure would have been 59.3%. Venezuelan Members were excluded from retention figures for the year ended January 2017 due to revised requalification criteria that are not comparable to prior periods or to other markets and were excluded from 2016 as sales leaders in the market were not required to requalify that year due to product supply limitations. Argentina is excluded from 2016 as described further in the 2016 10-K.

<u>Sales Leaders Statistics (Excluding China)</u>	<u>2017</u>	<u>2016</u>
	<u>(In thousands)</u>	
January 1 total sales leaders	572.9	603.3
January & February new sales leaders	26.8	27.7
Demoted sales leaders (did not re-qualify)(1)	(124.0)	(207.6)
Sales leaders who converted to preferred members	(38.3)	—
Other sales leaders (resigned, etc.)	(2.0)	(3.9)
End of February total sales leaders(1)	<u>435.4</u>	<u>419.5</u>

The statistics below further highlight the calculation for retention.

<u>Sales Leaders Retention (Excluding China)</u>	<u>2017</u>	<u>2016</u>
	<u>(In thousands)</u>	
Sales leaders needed to re-qualify	379.0	450.2
Demoted sales leaders (did not re-qualify)(2)	(148.3)	(206.4)
Total re-qualified	<u>230.7</u>	<u>243.8</u>
Retention rate	<u>60.9%</u>	<u>54.2%</u>

- (1) Demoted sales leaders excludes, and the end of February total sales leaders includes, approximately 10.0 thousand South Korea sales leaders who were demoted in March 2017, under a distinct program that granted our South Korea sales leaders one additional month to re-qualify.
- (2) For historical comparison purposes the 60.9% retention rate calculation for February 2017 includes as demoted 20.3 thousand sales leaders who re-qualified, but under a pilot program for certain markets with a lower re-qualification threshold, but excludes 6.0 thousand Venezuelan sales leaders who were demoted under revised criteria that are not comparable to prior periods or other markets. The retention rate for 2017 if calculated absent these adjustments would have been 65.5%.

The table below reflects the number of sales leaders as of the end of February of the year indicated (subsequent to the annual re-qualification date) and sales leader retention rate by year and by region.

	<u>Number of Sales Leaders</u>		<u>Sales Leaders Retention Rate</u>	
	<u>2017</u>	<u>2016</u>	<u>2017</u>	<u>2016</u>
North America	61,362	79,305	74.8 %	58.3 %
Mexico	74,968	67,294	71.7 %	57.1 %
South & Central America	73,375	77,523	55.2 %	53.0 %
EMEA	101,101	87,500	62.2 %	63.6 %
Asia Pacific (excluding China)	124,555	107,871	49.7 %	43.8 %
Total Sales Leaders	<u>435,361</u>	<u>419,493</u>	60.9 %	54.2 %
China	47,244	41,890		
Worldwide Total Sales Leaders	<u>482,605</u>	<u>461,383</u>		

Sales leaders generally purchase our products for resale to other Members and retail consumers. The number of sales leaders by geographic region as of the quarterly reporting dates will normally be higher than the number of sales leaders by geographic region as of the re-qualification period because sales leaders who do not re-qualify during the relevant twelve-month period will be removed from the rank of sales leader the following February. Comparisons of sales leader totals on a year-to-year basis are indicators of our recruitment and retention efforts in different geographic regions.

Retention Rate for the requalification period ended January 2017 was significantly improved compared to prior year periods. We believe this performance is the result of efforts we have made to improve the sustainability of sales leaders' businesses such as encouraging Members to obtain experience retailing Herbalife products before becoming a sales leader.

Presentation

“Retail value” represents the suggested retail price of products we sell to our Members and is the gross sales amount reflected on our invoices. Retail value is a Non-GAAP measure which may not be comparable to similarly-titled measures used by other companies. This is not the price paid to us by our Members. Our Members purchase product from us at a discount from the suggested retail price. We refer to these discounts as “distributor allowance”, and we refer to retail value less distributor allowances as “product sales”.

Total distributor allowances for the three months ended June 30, 2017 and 2016 were 40.1% and 40.2% of retail value, respectively. Total distributor allowances for the six months ended June 30, 2017 and 2016 were 40.3% and 40.1% of retail value, respectively. Distributor allowances and Marketing Plan payouts generally utilize 90% to 95% of suggested retail price, depending on the product and market, to which we apply discounts of up to 50% for distributor allowances and payout rates of up to 15% for royalty overrides, up to 7% for production bonuses, and approximately 1% for the Mark Hughes bonus. Distributor allowances as a percentage of retail value may vary by country depending upon regulatory restrictions that limit or otherwise restrict distributor allowances. We also offer reduced distributor allowances with respect to certain products worldwide. Each Member’s level of discount is determined by qualification based on volume of purchases. In cases where a Member has qualified for less than the maximum discount, the remaining discount, which we also refer to as a wholesale commission, is received by their sponsoring Members. Therefore, product sales are recognized net of product returns and distributor allowances.

“Net sales” equal product sales plus “shipping and handling revenues”, and generally represents what we collect.

We do not have visibility into all of the sales from our Members to their customers, but such a figure would differ from our reported “retail value” by factors including (a) the amount of product purchased by our Members for their own personal consumption and (b) prices charged by our Members to their customers other than our suggested retail prices. We discuss retail value because of its fundamental role in our systems, internal controls and operations, and its correlation to Member discounts and Royalty Overrides. In addition, retail value is a component of the financial reports we use to analyze our financial results because, among other things, it can provide additional detail and visibility into our net sales results on a Company-wide and a geographic region and product category basis. Therefore, this non-GAAP measure may be useful to investors because it provides investors with the same information used by management. As this measure is not in accordance with U.S. generally accepted accounting principles, or U.S. GAAP, retail value should not be considered in isolation from, nor as a substitute for, net sales and other consolidated income or cash flow statement data prepared in accordance with U.S. GAAP, or as a measure of profitability or liquidity. A reconciliation of retail value to net sales is presented below under *Results of Operations*.

Our international operations have provided and will continue to provide a significant portion of our total net sales. As a result, total net sales will continue to be affected by fluctuations in the U.S. dollar against foreign currencies. In order to provide a framework for assessing how our underlying businesses performed excluding the effect of foreign currency fluctuations, in addition to comparing the percent change in net sales from one period to another in U.S. dollars, we also compare the percent change in net sales from one period to another period using “net sales in local currency”. Net sales in local currency is not a U.S. GAAP financial measure. Net sales in local currency removes from net sales in U.S. dollars the impact of changes in exchange rates between the U.S. dollar and the local currencies of our foreign subsidiaries, by translating the current period net sales into U.S. dollars using the same foreign currency exchange rates that were used to translate the net sales for the previous comparable period. We believe presenting net sales in local currency is useful to investors because it allows a meaningful comparison of net sales of our foreign operations from period to period. However, net sales in local currency measures should not be considered in isolation or as an alternative to net sales in U.S. dollar measures that reflect current period exchange rates, or to other financial measures calculated and presented in accordance with U.S. GAAP.

Our “gross profit” consists of net sales less “cost of sales,” which represents our manufacturing costs, the price we pay to our raw material suppliers and manufacturers of our products as well as shipping and handling costs including duties, tariffs, and similar expenses.

While certain Members may profit from their activities by reselling our products for amounts greater than the prices they pay us, Members that develop, retain, and manage other Members may earn additional compensation for those activities, which we refer to as “Royalty overrides.” Royalty overrides are our most significant operating expense and consist of:

- royalty overrides and production bonuses;
- the Mark Hughes bonus payable to some of our most senior Members; and
- other discretionary incentive cash bonuses to qualifying Members.

Royalty overrides are compensation to Members for the development, retention and improved productivity of their sales organizations and are paid to several levels of Members on each sale. Royalty overrides are compensation for services rendered to us and as such are recorded as an operating expense.

In China, our independent service providers are compensated for marketing, sales support, and other services instead of the distributor allowances and royalty overrides utilized in our global marketing plan. Service fees to China independent service providers are included in selling, general and administrative expenses.

Because of local country regulatory constraints, we may be required to modify our Member incentive plans as described above. We also pay reduced royalty overrides with respect to certain products worldwide. Consequently, the total royalty override percentage may vary over time and from the percentages noted above.

Our “*contribution margins*” consist of net sales less cost of sales and royalty overrides.

“*Selling, general and administrative expenses*” represent our operating expenses, which include labor and benefits, service fees to China service providers, sales events, professional fees, travel and entertainment, Member promotions, occupancy costs, communication costs, bank fees, depreciation and amortization, foreign exchange gains and losses and other miscellaneous operating expenses.

Our “*other operating income*” consists of government grant income related to China.

Most of our sales to Members outside the United States are made in the respective local currencies. In preparing our financial statements, we translate revenues into U.S. dollars using average exchange rates. Additionally, the majority of our purchases from our suppliers generally are made in U.S. dollars. Consequently, a strengthening of the U.S. dollar versus a foreign currency can have a negative impact on our reported sales and contribution margins and can generate foreign currency losses on intercompany transactions. Foreign currency exchange rates can fluctuate significantly. From time to time, we enter into foreign currency derivatives to partially mitigate our foreign currency exchange risk as discussed in further detail in Part I, Item 3 — *Quantitative and Qualitative Disclosures about Market Risk*.

Summary Financial Results

Net sales for the three and six months ended June 30, 2017 were \$1,146.9 million and \$2,249.0 million, respectively. Net sales decreased \$54.9 million, or 4.6%, and \$72.4 million or 3.1%, for the three and six months ended June 30, 2017, as compared to the same periods in 2016. In local currency, net sales decreased 3.4% and 1.8% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The decrease in net sales of 4.6% for the three months ended June 30, 2017 was primarily driven by a decrease in sales volume, as indicated by an 8.1% decrease in Volume Points, and a 1.2% unfavorable fluctuation in foreign currency exchange rates partially offset by price increases, which increased net sales by approximately 2.6%. The decrease in net sales of 3.1% for the six months ended June 30, 2017 was primarily driven by a decrease in sales volume, as indicated by a 3.5% decrease in Volume Points, and a 1.3% unfavorable fluctuation in foreign currency exchange rates; partially offset by price increases, which increased net sales by approximately 2.0%.

Net income for the three and six months ended June 30, 2017 was \$137.6 million, or \$1.61 per diluted share, and \$222.8 million, or \$2.59 per diluted share, respectively. Net income increased \$160.5 million, or 700.9%, and \$149.9 million, or 205.6%, for the three and six months ended June 30, 2016, respectively, as compared to the same periods in 2016. The increase in net income for the three and six months ended June 30, 2017, was primarily due to lower selling, general, and administrative expenses mostly related to the \$203.0 million of regulatory settlements in the second quarter of 2016; higher other operating income related to government grant in China; partially offset by lower contribution margin driven by lower sales as discussed above; higher interest expense primarily due to an increase in borrowings in connection with the new senior secured credit facility entered into on February 15, 2017; and higher income taxes.

Net income for the three months ended June 30, 2017 included a \$38.9 million favorable impact (\$27.7 million post-tax) of government grant income in China; a \$12.6 million unfavorable impact of non-cash interest expense related to the Convertible Notes and the Forward Transactions (See Note 4, *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q); a \$2.9 million pre-tax unfavorable impact (\$1.9 million post-tax) from expenses related to regulatory inquiries; a \$1.6 million pre-tax unfavorable impact (\$1.2 million post-tax) related to legal, advisory services and other expenses for our response to allegations and other negative information put forward in the marketplace by a hedge fund manager which started in late 2012 (See *Selling, General and Administrative Expenses* below for further discussion); and a \$5.2 million pre-tax unfavorable impact (\$3.5 million post-tax) from expenses related to the implementation of the FTC Consent Order.

Net income for the six months ended June 30, 2017 included a \$38.9 million favorable impact (\$27.7 million post-tax) of government grant income in China; a \$25.3 million unfavorable impact of non-cash interest expense related to the Convertible Notes and the Forward Transactions (See Note 4 *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q); a \$6.7 million pre-tax unfavorable impact (\$4.4 million post-tax) from expenses related to regulatory inquiries; a \$3.1 million pre-tax unfavorable impact (\$2.3 million post-tax) related to legal, advisory services and other expenses for our response to allegations and other negative information put forward in the marketplace by a hedge fund manager which started in late 2012 (See *Selling, General and Administrative Expenses* below for further discussion); and a \$13.7 million pre-tax unfavorable impact (\$9.2 million post-tax) from expenses related to the implementation of the FTC Consent Order.

The income tax impact of the expenses discussed above is based on forecasted items affecting our 2017 full year effective tax rate. Adjustments to forecasted items unrelated to these expenses, as well as impacts related to interim reporting, will have an effect on the income tax impact of these items in subsequent periods.

Net loss for the three months ended June 30, 2016 included a \$203.0 million pre-tax unfavorable impact (\$136.5 million post-tax) related to regulatory settlements; a \$28.2 million pre-tax favorable impact (\$20.0 million post-tax) of government grant income in China; a \$11.3 million unfavorable impact of non-cash interest expense related to the Convertible Notes and the Forward Transactions (See Note 4, *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q); a \$2.5 million pre-tax unfavorable impact (\$1.6 million post-tax) from expenses related to regulatory inquiries; a \$4.6 million pre-tax unfavorable impact (\$3.4 million post-tax) related to legal, advisory services and other expenses for our response to allegations and other negative information put forward in the marketplace by a hedge fund manager which started in late 2012 (See *Selling, General and Administrative Expenses* below for further discussion); and a \$1.9 million pre-tax unfavorable impact (\$1.3 million post-tax) related to expenses incurred for the recovery of costs associated with the re-audit of our 2010 to 2012 financial statements after the resignation of KPMG as our independent registered public accounting firm.

Net income for the six months ended June 30, 2016 included a \$203.0 million pre-tax unfavorable impact (\$136.5 million post-tax) related to regulatory settlements; a \$28.9 million pre-tax favorable impact (\$20.5 million post-tax) of government grant income in China; a \$23.5 million unfavorable impact of non-cash interest expense related to the Convertible Notes and the Forward Transactions (See Note 4, *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q); a \$10.1 million pre-tax unfavorable impact (\$6.4 million post-tax) from expenses related to regulatory inquiries; a \$7.5 million pre-tax unfavorable impact (\$5.7 million post-tax) related to legal, advisory services and other expenses for our response to allegations and other negative information put forward in the marketplace by a hedge fund manager which started in late 2012 (See *Selling, General and Administrative Expenses* below for further discussion); and a \$3.3 million pre-tax unfavorable impact (\$2.2 million post-tax) related to expenses incurred for the recovery of costs associated with the re-audit of our 2010 to 2012 financial statements after the resignation of KPMG as our independent registered public accounting firm.

Results of Operations

Our results of operations for the periods below are not necessarily indicative of results of operations for future periods, which depend upon numerous factors, including our ability to sponsor Members and retain sales leaders, further penetrate existing markets, introduce new products and programs that will help our Members increase their retail efforts and develop niche market segments.

The following table sets forth selected results of our operations expressed as a percentage of netsales for the periods indicated:

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
Operations:				
Net sales	100.0 %	100.0 %	100.0 %	100.0 %
Cost of sales	19.1	19.7	18.8	19.4
Gross profit	80.9	80.3	81.2	80.6
Royalty overrides(1)	27.8	28.0	28.2	27.9
Selling, general and administrative expenses(1)	38.6	56.3	39.2	47.5
Other operating income	(3.4)	(2.3)	(1.7)	(1.2)
Operating (loss) income	17.9	(1.7)	15.5	6.4
Interest expense, net	3.3	1.9	3.0	2.1
Income (loss) before income taxes	14.6	(3.6)	12.5	4.3
Income taxes	2.6	(1.7)	2.6	1.2
Net income (loss)	12.0 %	(1.9)%	9.9 %	3.1 %

- (1) Service fees to our independent service providers in China are included in selling, general and administrative expenses while Member compensation for all other countries is included in royalty overrides.

Reporting Segment Results

We aggregate our operating segments, excluding China, into a reporting segment, or the Primary Reporting Segment. The Primary Reporting Segment includes the North America, Mexico, South & Central America, EMEA, and Asia Pacific regions. China has been identified as a separate reporting segment as it does not meet the criteria for aggregation. See Note 6, *Segment Information*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further discussion of our reporting segments. See below for discussions of net sales and contribution margin by our reporting segments.

Net Sales by Reporting Segment

The Primary Reporting Segment reported net sales of \$904.2 million and \$1,790.8 million for the three and six months ended June 30, 2017, respectively, representing a decrease of \$55.1 million, or 5.7%, and a decrease of \$70.7 million, or 3.8%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 5.6% and 3.4% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016 for the Primary Reporting Segment. The 5.7% decrease in net sales for the three months ended June 30, 2017 was primarily due to a decrease in sales volume, as indicated by a 7.3% decrease in Volume Points, and an unfavorable change in country mix, which reduced net sales by approximately 2.0%; partially offset by price increases which increased net sales by approximately 2.4%. The 3.8% decrease in net sales for the six months ended June 30, 2017 was primarily due to a decrease in sales volume, as indicated by a 4.0% decrease in Volume Points and an unfavorable change in country mix, which reduced net sales by approximately 2.3%; partially offset by price increases which increased net sales by approximately 2.0%.

For a discussion of China's net sales for the three and six months ended June 30, 2017 see the China section of the Sales by Geographic Region below.

Contribution Margin by Reporting Segment

As discussed above under "Presentation," contribution margin consists of net sales less cost of sales and Royalty overrides.

The Primary Reporting Segment reported contribution margin of \$393.2 million, or 43.5% of net sales, and \$779.8 million, or 43.5% of net sales, representing a decrease of \$12.5 million, or 3.1%, and a decrease of \$22.9 million, or 2.9%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The 3.1% decrease for the three months ended June 30, 2017 was primarily the result of volume decreases and unfavorable country mix which reduced contribution margin by approximately 5.5% and 5.5%, respectively, partially offset by price increases and cost savings through strategic sourcing and self-manufacturing, which increased contribution margin by approximately 3.8% and 2.3%, respectively. The 2.9% decrease for the six months ended June 30, 2017 was primarily the result of unfavorable country mix and volume decreases which reduced contribution margin by approximately 6.2% and 2.3%, respectively, partially offset by price increases and cost savings through strategic sourcing and self-manufacturing, which increased contribution margin by approximately 3.1% and 2.3%, respectively.

China reported contribution margin of \$216.0 million and \$411.8 million for the three and six months ended June 30, 2017, respectively, representing a decrease of \$7.1 million, or 3.2%, and \$8.9 million, or 2.1%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The decrease of 3.2% for the three months ended June 30, 2017 was primarily due to fluctuations in foreign currency rates which reduced contribution margin by approximately 5.9%, partially offset by the favorable impact of price increases which increased contribution margin by approximately 4.1%. The decrease of 2.1% for the six months ended June 30, 2017 was primarily due to fluctuations in foreign currency rates which reduced contribution margin by approximately 5.6%, partially offset by the favorable impact of price increases which increased contribution margin by approximately 2.2%.

Sales by Geographic Region

The following chart reconciles retail value to net sales by geographic region:

	Three Months Ended June 30,					2016					Change in Net Sales
	2017		Shipping & Handling Revenues			2016		Shipping & Handling Revenues			
	Retail Value(1)	Distributor Allowance	Product Sales	Net Sales	Net Sales	Retail Value(1)	Distributor Allowance	Product Sales	Net Sales	Net Sales	
	(In millions)										
North America	\$ 363.8	\$ (166.6)	\$ 197.2	\$ 21.2	\$ 218.4	\$ 441.1	\$ (199.6)	\$ 241.5	\$ 25.0	\$ 266.5	(18.0)%
Mexico	199.0	(90.4)	108.6	7.0	115.6	205.2	(93.1)	112.1	7.2	119.3	(3.1)%
South & Central America	192.6	(90.0)	102.6	7.4	110.0	209.1	(97.7)	111.4	8.5	119.9	(8.3)%
EMEA	387.2	(176.3)	210.9	13.8	224.7	373.6	(168.3)	205.3	13.7	219.0	2.6%
Asia Pacific	401.2	(173.2)	228.0	7.5	235.5	394.5	(168.1)	226.4	8.2	234.6	0.4%
China	274.3	(32.9)	241.4	1.3	242.7	277.9	(36.7)	241.2	1.3	242.5	0.1%
Worldwide	<u>\$ 1,818.1</u>	<u>\$ (729.4)</u>	<u>\$ 1,088.7</u>	<u>\$ 58.2</u>	<u>\$ 1,146.9</u>	<u>\$ 1,901.4</u>	<u>\$ (763.5)</u>	<u>\$ 1,137.9</u>	<u>\$ 63.9</u>	<u>\$ 1,201.8</u>	<u>(4.6)%</u>

	Six Months Ended June 30,					2016					Change in Net Sales
	2017		Shipping & Handling Revenues			2016		Shipping & Handling Revenues			
	Retail Value(1)	Distributor Allowance	Product Sales	Net Sales	Net Sales	Retail Value(1)	Distributor Allowance	Product Sales	Net Sales	Net Sales	
	(In millions)										
North America	\$ 749.8	\$ (345.4)	\$ 404.4	\$ 43.8	\$ 448.2	\$ 846.9	\$ (382.5)	\$ 464.4	\$ 48.1	\$ 512.5	(12.5)%
Mexico	379.1	(172.0)	207.1	13.3	220.4	393.1	(177.9)	215.2	13.8	229.0	(3.8)%
South & Central America	405.5	(188.8)	216.7	15.7	232.4	426.1	(196.7)	229.4	17.5	246.9	(5.9)%
EMEA	748.4	(340.2)	408.2	26.3	434.5	713.9	(322.5)	391.4	26.0	417.4	4.1%
Asia Pacific	775.8	(334.9)	440.9	14.4	455.3	753.6	(321.5)	432.1	23.6	455.7	(0.1)%
China	514.7	(58.9)	455.8	2.4	458.2	524.5	(67.1)	457.4	2.5	459.9	(0.4)%
Worldwide	<u>\$ 3,573.3</u>	<u>\$ (1,440.2)</u>	<u>\$ 2,133.1</u>	<u>\$ 115.9</u>	<u>\$ 2,249.0</u>	<u>\$ 3,658.1</u>	<u>\$ (1,468.2)</u>	<u>\$ 2,189.9</u>	<u>\$ 131.5</u>	<u>\$ 2,321.4</u>	<u>(3.1)%</u>

- (1) Retail value is a Non-GAAP measure which may not be comparable to similarly-titled measures used by other companies. See "Presentation" above for a discussion of how we calculate retail value and why we believe the measure is useful to investors.

Changes in net sales are directly associated with the retailing of our products, recruitment of new Members, and retention of sales leaders. Our strategies involve providing quality products, improved DMOs, including daily consumption approaches such as Nutrition Clubs, easier access to product, systemized training and education of Members on our products and methods, and continued promotion and branding of Herbalife products.

Management's role, in-country and at the region and corporate level, is to provide Members with a competitive and broad product line, encourage strong teamwork and Member leadership and offer leading edge business tools and technology services to make doing business with Herbalife simple. Management uses the Marketing Plan, which reflects the rules for our global network marketing organization that specify the qualification requirements and general compensation structure for Members, coupled with educational and motivational tools and promotions to encourage Members to increase retailing, retention, and recruiting, which in turn affect net sales. Such tools include sales events such as Extravanzas, Leadership Development Weekends and World Team Schools where large groups of Members gather, thus allowing them to network with other Members, learn retailing, retention, and recruiting techniques from our leading Members and become more familiar with how to market and sell our products and business opportunities. Accordingly, management believes that these development and motivation programs increase the productivity of the sales leader network. The expenses for such programs are included in selling, general and administrative expenses. We also use event and non-event product promotions to motivate Members to increase retailing, retention, and recruiting activities. These promotions have prizes ranging from qualifying for events to product prizes and vacations. A program that we have seen success with and begun to use on a broad basis is the Member Activation Program, under which new Members, who order a modest number of Volume Points in each of their first three months, earn a prize. Our objective is to improve the quality of sales leaders by encouraging new Members to begin acquiring retail customers before attempting to qualify for sales leader status. The costs of these programs are included in selling, general and administrative expenses.

DMOs are being generated in many of our markets and are globalized where applicable through the combined efforts of Members and country, regional and corporate management. While we support a number of different DMOs, one of the most popular DMOs is the daily consumption DMO. Under our traditional DMO, a Member typically sells to its customers on a somewhat infrequent basis (e.g., monthly) which provides fewer opportunities for interaction with their customers. Under a daily consumption DMO, a Member interacts with its customers on a more frequent basis, including such activities as weekly weigh-ins, which enables the Member to better educate and advise customers about nutrition and the proper use of the products and helps promote daily usage as well, thereby helping the Member grow his or her business. Specific examples of DMOs include the Nutrition Club concept in Mexico, the Healthy Breakfast concept in Russia, and the Internet/Sampling and Weight Loss Challenge in the United States. Management's strategy is to review the applicability of expanding successful country initiatives throughout a region, and where appropriate, support the globalization of these initiatives.

The factors described above helps Members increase their business, which in turn helps drive Volume Point growth in our business, and thus, net sales growth. The discussion below of net sales details some of the specific drivers of changes in our business and causes of sales fluctuations during the three and six months ended June 30, 2017, as compared to the same periods in 2016, as well as the unique growth or contraction factors specific to certain geographic regions or significant countries within a region during these periods. Net sales fluctuations, both Company-wide and within a particular geographic region or country, are primarily the result of changes in volume, changes in prices, and/or changes in foreign currency translation rates. The discussion of changes in net sales quantifies the impact of those drivers that are quantifiable such as changes in foreign currency translation rates, and cites the estimated impact of any significant price changes. The remaining drivers, which management believes are the primary drivers of changes in volume, are typically qualitative factors whose impact cannot be quantified. The Company measures sales volume using Volume Points.

North America

The North America region reported net sales of \$218.4 million and \$448.2 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$48.1 million, or 18.0%, and \$64.3 million, or 12.5% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 17.9% and 12.5% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The decrease in net sales for the three and six months ended June 30, 2017, as compared to the same periods in 2016, was a result of a net sales decrease in the U.S. of \$47.7 million or 18.3%, and \$63.9 million, or 12.7%, respectively. The decreases in net sales for the North America region for the three and six months ended June 30, 2017 were primarily the result of decreases in sales volume, as indicated by decreases in Volume Points.

As part of our FTC settlement, we have implemented certain new procedures and enhanced certain existing procedures in the United States. We believe North America's Volume Point decreases for the second quarter and first half of 2017, versus increases for the prior year periods, reflect a transitional impact of Member focus on FTC settlement implementation actions including training on new tools and methods for documenting sales and time spent to then train their sales organizations. Similar to the transitional impact that occurred as a result of Marketing Plan changes made in 2014, we do not expect the FTC settlement to have a long-term material adverse impact on our net sales in the North America region or on our Member base. However, we believe net sales for the region could continue to be negatively impacted during the remainder of 2017 as we and our Members spend time educating and training, and as our Members implement and adjust to the changes.

Mexico

The Mexico region reported net sales of \$115.6 million and \$220.4 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$3.7 million, or 3.1%, and \$8.6 million, or 3.8%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 0.6% and increased 3.3% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The 3.1% decrease in net sales for the three months ended June 30, 2017 was primarily the result of a decrease in sales volume, as indicated by a 5.6% decrease in Volume Points, and a 2.4% unfavorable fluctuation in foreign currency exchange rates. These reductions to net sales were partially offset by price increases which contributed approximately 5.4% to net sales. The 3.8% decrease in net sales for the six months ended June 30, 2017 was primarily the result of a 7.0% unfavorable fluctuation in foreign currency exchange rates, as well as a decrease in sales volume, as indicated by a 0.9% decrease in Volume Points. These reductions to net sales were partially offset by price increases which contributed approximately 4.6% to net sales.

Mexico has had success with the Member Activation Program which rewards new Members who purchase a modest amount of product, acquire customers and gain retailing experience. Following six consecutive quarters of year-over-year growth, volume declined for the second quarter of 2017 versus the second quarter of 2016, which was a record quarter for the market. We believe softer volume is attributable to a tougher economic environment marked by rising inflation, tightening credit and lower macro consumer sentiment.

South and Central America

The South and Central America region reported net sales of \$110.0 million and \$232.4 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$9.9 million, or 8.3%, and \$14.5 million, or 5.9%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 8.9% and 8.3% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The 8.3% decrease in net sales for the three months ended June 30, 2017 was primarily the result of a decline in sales volume, as indicated by a 14.2% decrease in Volume Points. This reduction to net sales was partially offset by price increases and fluctuations in foreign currency exchange rates which contributed approximately 6.4% and 0.7%, respectively, to net sales. The 5.9% decrease in net sales for the six months ended June 30, 2017 was primarily the result of a decline in sales volume, as indicated by a 14.0% decrease in Volume Points. This reduction to net sales was partially offset by price increases and fluctuations in foreign currency exchange rates which contributed approximately 6.7% and 2.4%, respectively.

In Brazil, the region's largest market, net sales were \$43.2 million and \$94.5 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$2.2 million, or 4.9%, and \$1.2 million, or 1.2% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 13.0% and 15.3% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$3.7 million and \$13.5 million, respectively, on net sales for the three and six months ended June 30, 2017. Marketing Plan changes intended to build more sustainable business for our Members through a focus on daily product consumption and retailing are taking hold following a lengthy transition period. In addition, we have introduced programs in Brazil that have been successful in other regions to improve Member activity and productivity. We are also increasing the number of product access points, expanding our product offering to promote more frequent consumption moments, and exploring product affordability approaches for the market. Changes in ICMS tax legislation, effective April 2016, reduced net sales by approximately \$4 million for the first quarter of 2017.

Net sales in Peru were \$14.6 million and \$30.7 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$1.0 million, or 6.7%, and \$1.4 million, or 4.4%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 8.2% and 7.4% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$0.2 million and \$1.0 million on net sales for the three and six months ended June 30, 2017, respectively. Slower sales volume is attributed in part to reductions in qualification levels for certain promotions during the period that did not achieve their objectives of increasing the number of qualifiers. Also, Peru experienced severe inclement weather during the first quarter, which we believe directly impacted the ability of our Members to operate their businesses.

EMEA

The EMEA region reported net sales of \$224.7 million and \$434.5 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$5.7 million, or 2.6%, and \$17.1 million, or 4.1%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales increased 3.8% and 4.7% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The 2.6% increase in net sales for the three months ended June 30, 2017 was primarily the result of an increase in sales volume, as indicated by a 2.4% increase in Volume Points, and price increases which contributed approximately 1.6% to net sales. This increase in net sales was partially offset by a 1.2% unfavorable fluctuation in foreign currency exchange rates. The 4.1% increase in net sales for the six months ended June 30, 2017 was primarily the result of an increase in sales volume, as indicated by a 3.8% increase in Volume Points, and price increases which contributed approximately 1.6% to net sales. This increase in net sales was partially offset by a 0.6% unfavorable fluctuation in foreign currency exchange rates. Though the region is made up of a large number of markets with different characteristics and levels of success, generally we believe volume growth for the region is correlated with programs that have enhanced the quality and activity of sales leaders as they continue to focus on customer-oriented initiatives.

Net sales in Italy were \$38.0 million and \$71.3 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$1.1 million, or 2.8%, and \$1.1 million, or 1.5%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 0.3% and increased 1.5% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had an unfavorable impact of \$1.0 million and \$2.2 million on net sales for the three and six months ended June 30, 2017, respectively. Italy continues to benefit from ongoing events such as city-by-city tours and increased efforts to increase brand awareness. Italy has seen a modest decline in new Members and volumes as the newly introduced Member Activation Program is adopted and optimized by Members and sales leaders.

Net sales in Russia were \$32.7 million and \$64.7 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$5.9 million, or 21.9%, and \$13.7 million, or 26.8%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales increased 5.8% and 5.1% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$4.3 million and \$11.0 million on net sales for the three and six months ended June 30, 2017, respectively. Product prices in Russia were increased 5% in February 2017 and 5% in March 2016.

Net sales in Spain were \$26.7 million and \$49.9 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$1.6 million, or 5.6%, and \$1.4 million, or 2.8%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 3.2% and increased 0.2% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had an unfavorable impact of \$0.7 million and \$1.5 million on net sales for the three and six months ended June 30, 2017, respectively. Spain has continued to develop and support member retailing with multiple approaches including personal evaluations, fitness activities, shake parties, nutrition training, customer follow-up, and other customer oriented activities. Spain has seen a modest decline in new Members and volumes as the newly introduced Member Activation Program is adopted and optimized by Members and sales leaders.

Asia Pacific

The Asia Pacific region, which excludes China, reported net sales of \$235.5 million and \$455.3 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$0.9 million, or 0.4%, and decreased \$0.4 million, or 0.1%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 1.0% and 1.5% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The 0.4% increase in net sales for the three months ended June 30, 2017 was primarily the result of price increases and the impact of fluctuations in foreign currency exchange rates, which increased net sales by approximately 2.1% and 1.4%, respectively. This increase in net sales was partially offset by a decrease in sales volume, as indicated by a 0.7% decrease in Volume Points, and an unfavorable change in country sales mix resulting from a lower percentage of our sales volume coming from markets with higher prices, which reduced net sales by approximately 4.2%. The 0.1% decrease in net sales for the six months ended June 30, 2017 was primarily the result of an unfavorable change in country sales mix resulting from a lower percentage of our sales volume coming from markets with higher prices, which decreased net sales by approximately 4.0%. This reduction to net sales was partially offset by an increase in sales volume, as indicated by a 1.8% increase in Volume Points, and fluctuations in foreign currency exchange rates and price increases, which contributed approximately 1.4% and 0.7%, respectively, to net sales. The Volume Points performance for the region has been mixed by country, with increases led by India and Indonesia, offset by declines primarily in South Korea and Taiwan.

Net sales in South Korea were \$36.5 million and \$71.1 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$13.7 million, or 27.3%, and \$26.4 million, or 27.1%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 29.4% and 29.6% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$1.1 million and \$2.4 million on net sales for the three and six months ended June 30, 2017, respectively. South Korea continues to be negatively impacted by a number of changes in the Marketing Plan, including certain changes unique to the market. In addition to a shift in emphasis toward longer-term sales leader qualification, we also changed the product discount structure in South Korea and began charging a fee for the Member kit during 2016. Previously, the Member kit in South Korea was free. While we believe these changes will benefit the market in the long term, they have resulted in sales declines as sales leaders continue to adapt to these new methods of operation.

Net sales in India were \$47.9 million and \$89.2 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$9.3 million, or 24.1%, and \$12.7 million, or 16.6%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales increased 19.6% and 13.9% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$1.7 million and \$2.0 million on net sales for the three and six months ended June 30, 2017, respectively. In 2016, we introduced the Member Activation Program which we believe has contributed to higher sales leader activity. Additionally, we began the segmentation of our Members into preferred members and distributors as required by local regulations. India continues to expand its product line, offering more comprehensive nutrition products for customers.

Net sales in Taiwan were \$34.0 million and \$64.5 million for the three and six months ended June 30, 2017, respectively. Net sales decreased \$2.0 million, or 5.6%, and \$1.9 million, or 2.9%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales decreased 11.9% and 9.1% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had a favorable impact of \$2.3 million and \$4.1 million on net sales for the three and six months ended June 30, 2017, respectively. Taiwan sales have declined versus the prior year period on a local currency basis as the market adjusts to and Members optimize programs and training introduced in 2016.

Net sales in Indonesia were \$31.8 million and \$65.0 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$4.1 million, or 14.7%, and \$10.5 million, or 19.2%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales increased 14.7% and 18.4% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The fluctuation of foreign currency rates had an insignificant impact on net sales and a favorable impact of \$0.4 million for the three and six months ended June 30, 2017, respectively. Indonesia had a price increase of 3% in September 2016. The Indonesia market has continued to make progress by focusing on a customer-based business and daily consumption through Nutrition Clubs, training activities, and new products. We have increased the number of product access points for the market and expanded a city-by-city training and promotion approach.

China

Net sales in China were \$242.7 million and \$458.2 million for the three and six months ended June 30, 2017, respectively. Net sales increased \$0.2 million, or 0.1%, and decreased \$1.7 million, or 0.4%, for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. In local currency, net sales increased 5.3% and 5.0% for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. The relatively flat net sales for the three months ended June 30, 2017 included the benefit of a price increase, which increased net sales by approximately 3.8%, and an unfavorable fluctuation in foreign currency exchange rates, which decreased net sales by 5.2%. The Volume Point decrease for China for the second quarter noted above under Volume Points by Geographic Region did not have a significant net sales impact, as sales orders for which Volume Points were pulled forward into the first quarter due to the price increase announced in March 2017 which took effect on April 1, were not recorded as net sales until the second quarter. The net sales decrease for the six months ended June 30, 2017, was the result of a 5.3% unfavorable fluctuation in foreign currency exchange rates, partially offset by the favorable effects of a price increase, which increased net sales by approximately 2.0%, and an increase in sales volume, as indicated by a 0.3% increase in Volume Points.

We believe the continued adoption and acculturation of daily consumption DMOs in the China market, supported by ongoing investments in areas including brand awareness, product access, and online and mobile platforms has contributed to growth in China over recent years. We believe the lower rate of sales volume increase for the year-to-date is attributable to factors such as Member overemphasis on social media business methods; reduction in the number of Nutrition Clubs as Members in some cases consolidated smaller clubs into larger, more commercialized clubs; and temporary government limitations on companies conducting commercial meetings ahead of the National Congress this fall, which have reduced certain Member activities in the near term. Members in China are now re-focusing on more established business methods, complimented by the use of social media. In addition, we have introduced the Member Activation Program for new members and in May we successfully expanded our online ordering platform, which allow our Members and Preferred Customers in China to purchase certain new products from a wholly owned subsidiary outside China for only personal consumption.

Sales by Product Category

	Three Months Ended June 30,										
	2017					2016					
	Retail Value(2)	Distributor Allowance	Product Sales	Shipping & Handling Revenues	Net Sales	Retail Value(2)	Distributor Allowance	Product Sales	Shipping & Handling Revenues	Net Sales	% Change in Net Sales
	(In millions)										
Weight Management	\$ 1,192.7	\$ (488.4)	\$ 704.3	\$ 38.2	\$ 742.5	\$ 1,241.3	\$ (511.8)	\$ 729.5	\$ 41.7	\$ 771.2	(3.7)%
Targeted Nutrition	440.6	(180.4)	260.2	14.1	274.3	449.1	(185.1)	264.0	15.1	279.1	(1.7)%
Energy, Sports and Fitness	111.7	(45.7)	66.0	3.5	69.5	117.3	(48.4)	68.9	4.0	72.9	(4.7)%
Outer Nutrition	38.5	(15.8)	22.7	1.3	24.0	46.9	(19.3)	27.6	1.6	29.2	(17.8)%
Literature, Promotional and Other(1)	34.6	0.9	35.5	1.1	36.6	46.8	1.1	47.9	1.5	49.4	(25.9)%
Total	<u>\$ 1,818.1</u>	<u>\$ (729.4)</u>	<u>\$ 1,088.7</u>	<u>\$ 58.2</u>	<u>\$ 1,146.9</u>	<u>\$ 1,901.4</u>	<u>\$ (763.5)</u>	<u>\$ 1,137.9</u>	<u>\$ 63.9</u>	<u>\$ 1,201.8</u>	(4.6)%

	Six Months Ended June 30,										
	2017					2016					
	Retail Value(2)	Distributor Allowance	Product Sales	Shipping & Handling Revenues	Net Sales	Retail Value(2)	Distributor Allowance	Product Sales	Shipping & Handling Revenues	Net Sales	% Change in Net Sales
	(In millions)										
Weight Management	\$ 2,336.9	\$ (962.4)	\$ 1,374.5	\$ 75.8	\$ 1,450.3	\$ 2,381.4	\$ (982.8)	\$ 1,398.6	\$ 85.6	\$ 1,484.2	(2.3)%
Targeted Nutrition	872.1	(359.1)	513.0	28.3	541.3	868.1	(358.2)	509.9	31.2	541.1	0.0%
Energy, Sports and Fitness	214.2	(88.2)	126.0	6.9	132.9	219.0	(90.4)	128.6	7.9	136.5	(2.6)%
Outer Nutrition	78.9	(32.5)	46.4	2.6	49.0	93.9	(38.7)	55.2	3.4	58.6	(16.4)%
Literature, Promotional and Other(1)	71.2	2.0	73.2	2.3	75.5	95.7	1.9	97.6	3.4	101.0	(25.2)%
Total	<u>\$ 3,573.3</u>	<u>\$ (1,440.2)</u>	<u>\$ 2,133.1</u>	<u>\$ 115.9</u>	<u>\$ 2,249.0</u>	<u>\$ 3,658.1</u>	<u>\$ (1,468.2)</u>	<u>\$ 2,189.9</u>	<u>\$ 131.5</u>	<u>\$ 2,321.4</u>	(3.1)%

(1) Product buy backs and returns in all product categories are included in literature, promotional and other category.

(2) Retail value is a Non-GAAP measure which may not be comparable to similarly-titled measures used by other companies. See "Presentation" above for a discussion of how we calculate retail value and why we believe the measure is useful to investors.

Net sales for the Targeted Nutrition product category decreased and were flat for the three and six months ended June 30, 2017, respectively, as compared to the same periods in 2016. Net sales for the Weight Management, Energy, Sports and Fitness, Outer Nutrition, and Literature, Promotional, and Other product categories decreased for the three and six months ended June 30, 2017 as compared to the same periods in 2016. The trend and business factors described in the above discussions of the individual geographic regions apply generally to all product categories.

Gross Profit

Gross profit was \$928.1 million and \$1,825.6 million for the three and six months ended June 30, 2017, respectively, as compared to \$965.5 million and \$1,872.0 million for the same period in 2016. As a percentage of net sales, gross profit for the three months ended June 30, 2017 was 80.9% as compared to 80.3% for the same period in 2016, or a favorable net increase of 59 basis points and for the six months ended June 30, 2017 was 81.2% as compared to 80.6% in the same period in 2016, or a favorable net increase of 54 basis points. The gross profit rate for the three months ended June 30, 2017 included the favorable impact of cost savings through strategic sourcing and self-manufacturing of 68 basis points, retail price increases of 54 basis points, other cost changes of 11 basis points, and country mix of 10 basis points, partially offset by the unfavorable impact of foreign currency fluctuations of 49 basis points and higher inventory write-downs of 35 basis points. The 54 basis point net increase for the six months ended June 30, 2017 included the favorable impact of cost savings through strategic sourcing and self-manufacturing of 74 basis points, retail price increases of 39 basis points, other cost changes of 14 basis points and country mix of 3 basis points, partially offset by the unfavorable impact of foreign currency fluctuations of 61 basis points and higher inventory write-downs of 15 basis points. Generally, gross profit as a percentage of net sales may vary from period to period due to the impact of foreign currency fluctuations, changes in country mix as volume changes among countries with varying margins, retail price increases, cost savings through strategic sourcing and self-manufacturing, and inventory write-downs.

Royalty Overrides

Royalty overrides were \$318.9 million and \$634.0 million for the three and six months ended June 30, 2017, respectively, as compared to \$336.7 million and \$648.6 million for the same periods in 2016. Royalty overrides as a percentage of net sales were 27.8% and 28.2% for the three and six months ended June 30, 2017, respectively, as compared to 28.0% and 27.9% for the same periods in 2016. Compensation to our independent service providers in China is included in selling, general and administrative expenses as opposed to royalty overrides where it is included for all other Members. Generally, royalty overrides as a percentage of net sales may vary slightly from period to period due to changes in the mix of products and countries because full royalty overrides are not paid on certain products and in certain countries.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were \$443.2 million and \$881.8 million for the three and six months ended June 30, 2017, respectively, as compared to \$676.8 million and \$1,103.9 million for the same periods in 2016. Selling, general and administrative expenses as a percentage of net sales were 38.6% and 39.2% for the three and six months ended June 30, 2017, respectively, as compared to 56.3% and 47.5% for the same periods in 2016.

The decrease in selling, general and administrative expenses for the three and six months ended June 30, 2017 was primarily due to the \$203.0 million related to regulatory settlements in the second quarter of 2016.

In late 2012, a hedge fund manager publicly raised allegations regarding the legality of our network marketing program and announced that the hedge fund manager had taken a significant short position regarding our common shares, leading to intense public scrutiny and significant stock price volatility. We have engaged legal and advisory services firms to assist with responding to the allegations and to perform other related services in connection to these events. For the three months ended June 30, 2017 and 2016, we recorded approximately \$1.6 million and \$4.6 million, respectively, of expenses related to this matter, which includes approximately \$1.2 million and \$3.6 million, respectively, of legal, advisory and other professional service fees. For the six months ended June 30, 2017 and 2016, we recorded approximately \$3.1 million and \$7.5 million, respectively, of expenses related to this matter, which includes approximately \$2.0 million and \$5.8 million, respectively, of legal, advisory and other professional service fees. We expect to continue to incur expenses related to this matter over the next several periods and the expenses are expected to vary from period to period.

Other Operating Income

During the three and six months ended June 30, 2017, the Company recognized government grant income of approximately \$38.9 million, as compared to \$28.1 million and \$28.9 million for the same periods in 2016, relating to government grant income for China. See Note 2, *Significant Accounting Policies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion.

Net Interest Expense

Net interest expense is as follows:

	Three Months Ended		Six Months Ended	
	June 30, 2017	June 30, 2016	June 30, 2017	June 30, 2016
	(Dollars in millions)			
Interest expense	\$ 41.9	\$ 24.6	\$ 74.4	\$ 50.6
Interest income	(4.0)	(1.5)	(6.3)	(2.6)
Net interest expense	<u>\$ 37.9</u>	<u>\$ 23.1</u>	<u>\$ 68.1</u>	<u>\$ 48.0</u>

The increase in net interest expense for the three and six months ended June 30, 2017, as compared to the same period in 2016, was primarily due to the increase in our interest expense due to higher interest rates and increased borrowing amounts relating to our new \$1.45 billion senior secured credit facility, which includes a \$1.3 billion term loan B, that was entered into on February 15, 2017 as discussed further below in *Liquidity and Capital Resources*. These increases were partially offset by higher interest income related to proceeds from the \$1.3 billion term loan B.

Income Taxes

Income taxes were an expense of \$29.4 million and expense of \$57.8 million for the three and six months ended June 30, 2017, respectively, as compared to a benefit of \$20.1 million and an expense of \$27.5 million for the same periods in 2016. The effective income tax rate was 17.6% and 20.6% for the three and six months ended June 30, 2017, respectively, as compared to 46.7% and 27.4% for the same periods in 2016. The decrease in the effective tax rate for the three months ended June 30, 2017, as compared to the same period in 2016, was due to the change in the geographic mix of our income, primarily related to the FTC settlement and to an increase in net benefits from discrete events. The decrease in the effective tax rate for the six months ended June 30, 2017, as compared to the same period in 2016, was primarily due to an increase in net benefits from discrete events. Included in the discrete events for the three and six months ended June 30, 2017 was the impact of \$21.4 million and \$25.7 million of excess tax benefits generated during those respective periods, relating to our application of Accounting Standards Update No. 2016-09 that was adopted on January 1, 2017.

Liquidity and Capital Resources

We have historically met our working capital and capital expenditure requirements, including funding for expansion of operations, through net cash flows provided by operating activities. Variations in sales of our products directly affect the availability of funds. There are no material contractual restrictions on our ability to transfer and remit funds among our international affiliated companies. However, there are foreign currency restrictions in certain countries which could reduce our ability to timely obtain U.S. dollars. Even with these restrictions, we believe we will have sufficient resources, including cash flow from operating activities and access to capital markets, to meet debt service obligations in a timely manner and be able to continue to meet our objectives.

Historically, our debt has not resulted from the need to fund our normal operations, but instead has resulted primarily from our share repurchase programs. Since inception in 2007, total share repurchases amounted to approximately \$3.4 billion. While a significant net sales decline could potentially affect the availability of funds, many of our largest expenses are variable in nature, which we believe protects our funding in all but a dramatic net sales downturn. Our \$1,624.1 million cash and cash equivalents and our senior secured credit facility, in addition to cash flow from operations, can be used to support general corporate purposes, including, any future share repurchases, dividends, and strategic investment opportunities.

We have a cash pooling arrangement with a financial institution for cash management purposes. This cash pooling arrangement allows certain of our participating subsidiaries to withdraw cash from this financial institution based upon our aggregate cash deposits held by subsidiaries who participate in the cash pooling arrangement. We did not owe any amounts to this financial institution under the pooling arrangement as of June 30, 2017 and December 31, 2016.

For the six months ended June 30, 2017, we generated \$277.1 million of operating cash flow, as compared to \$368.0 million for the same period in 2016. The decrease in our operating cash flow was primarily the result of unfavorable changes in operating assets and liabilities, partially offset by higher net income. The unfavorable change in operating assets and liabilities was primarily the result of changes in other current liabilities primarily related to the accrual of the \$203.0 million regulatory settlements in the second quarter of 2016, changes in employee bonus accruals, advance sales deposits, and non-income and income tax payables. The increase in net income is also primarily related to the \$203.0 million regulatory settlements in 2016, partially offset by lower contribution margin driven by lower sales in 2017.

Capital expenditures, including accrued capital expenditures, for the six months ended June 30, 2017 and 2016 were \$42.3 million and \$82.2 million, respectively. The majority of these expenditures represented investments in management information systems including the upgrade of our Oracle enterprise wide systems which is expected to go live in August 2017, manufacturing facilities both domestically and internationally, and initiatives to develop web-based Member tools. We expect to incur total capital expenditures of approximately \$115 million to \$135 million for the full year of 2017.

In March 2017, Herbalife hosted its annual global Herbalife Summit event in Charlotte, North Carolina where President Team members from around the world met and shared best practices, conducted leadership training and Herbalife management awarded Members \$65.2 million of Mark Hughes bonus payments related to their 2016 performance. In March 2016, Herbalife management awarded Members \$64.3 million of Mark Hughes bonus payments related to their 2015 performance.

Senior Secured Credit Facility

In May 2015, we amended our prior senior secured credit facility, or the Prior Credit Facility, and our \$700 million borrowing capacity on our prior revolving credit facility, or the Prior Revolving Credit Facility, was reduced by approximately \$235.9 million, and was further reduced by approximately \$39.1 million on September 30, 2015, bringing the total available borrowing capacity to \$425.0 million as of December 31, 2016. The Company repaid in full its \$500 million term loan under the Prior Credit Facility, or the Prior Term Loan, on March 9, 2016. On February 15, 2017, we entered into a \$1,450.0 million senior secured credit facility, or the Credit Facility, consisting of a \$1,300.0 million term loan B, or the Term Loan, and a \$150 million revolving credit facility, or the Revolving Credit Facility, with a syndicate of financial institutions as lenders, or Lenders. The Revolving Credit Facility matures on February 15, 2022 and the Term Loan matures on February 15, 2023.

The Credit Facility requires us to comply with a leverage ratio. In addition, the Credit Facility contains customary covenants, including covenants that limit or restrict our ability to incur liens, incur indebtedness, make investments, dispose of assets, make certain restricted payments, pay dividends, repurchase our common shares, merge or consolidate and enter into certain transactions with affiliates. We are also required to maintain a minimum balance of \$200.0 million of consolidated cash and cash equivalents. As of June 30, 2017 and December 31, 2016, we were compliant with our debt covenants under the Credit Facility and the Prior Credit Facility, respectively.

The Term Loan is payable in consecutive quarterly installments each in an aggregate principal amount of \$24.4 million, which began on June 30, 2017. Interest is due at least quarterly on amounts outstanding on the Credit Facility. In addition, we may be required to make mandatory prepayments towards the Term Loan based on the Company's consolidated leverage ratio and annual excess cash flows as defined under the terms of the credit agreement. We are also permitted to make voluntary prepayments. These prepayments, if any, will be applied against remaining quarterly installments owed under the Term Loan in order of maturity with the remaining principal due upon maturity.

During the three months ended March 31, 2017, we repaid a total amount of \$410.0 million to repay in full amounts outstanding on the Prior Revolving Credit Facility. During the three months ended June 30, 2017, the Company repaid a total amount of \$24.4 million on amounts outstanding under the Term Loan. During the three months ended March 31, 2016, we repaid a total amount of \$229.7 million to repay in full the Prior Term Loan. The Company did not repay any amounts under the Prior Revolving Credit Facility during the three months ended June 30, 2016. As of June 30, 2017, the U.S. dollar amount outstanding under the Term Loan was \$1,275.6 million. There were no amounts outstanding on the Revolving Credit Facility as of June 30, 2017. As of December 31, 2016, the U.S. dollar amount outstanding under the Prior Revolving Credit Facility was \$410.0 million. There were no outstanding foreign currency borrowings as of June 30, 2017 and December 31, 2016 under the Credit Facility and the Prior Credit Facility, respectively. On June 30, 2017 and December 31, 2016, the weighted average interest rate for borrowings under the Credit Facility and the Prior Credit Facility was 6.53% and 4.29%, respectively.

See Note 4, *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion on our Credit Facility.

Convertible Senior Notes

During February 2014, we issued \$1.15 billion aggregate principal amount of convertible senior notes, or the Convertible Notes. The Convertible Notes are senior unsecured obligations which rank effectively subordinate to any of our existing and future secured indebtedness, including amounts outstanding under the Credit Facility, to the extent of the value of the assets securing such indebtedness. The Convertible Notes pay interest at a rate of 2.00% per annum payable semiannually in arrears on February 15 and August 15 of each year, beginning on August 15, 2014. The Convertible Notes mature on August 15, 2019, unless earlier repurchased or converted. The primary purpose of the issuance of the Convertible Notes was for share repurchase purposes. See Note 4, *Long-Term Debt*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion on our Convertible Notes.

Cash and cash equivalents

The majority of our foreign subsidiaries designate their local currencies as their functional currencies. At June 30, 2017 and December 31, 2016, the total amount of our foreign subsidiary cash and cash equivalents was \$1,433.7 million and \$316.2 million, respectively, of which \$933.1 million and \$28.2 million, respectively, was invested in U.S. dollars. The increase in our foreign subsidiary U.S. dollar denominated cash and cash equivalents primarily relates to our borrowings from our Credit Facility executed on February 15, 2017. At June 30, 2017 and December 31, 2016, the total amount of cash and cash equivalents held by our parent and its U.S. entities, inclusive of U.S. territories, was \$190.4 million and \$527.8 million, respectively.

For earnings not considered to be indefinitely reinvested, deferred taxes have been provided. For earnings considered to be indefinitely reinvested, deferred taxes have not been provided. Should we make a determination to remit the cash and cash equivalents from our foreign subsidiaries that are considered indefinitely reinvested to our U.S. consolidated group for the purpose of repatriation of undistributed earnings, we would need to accrue and pay taxes. As of December 31, 2016, our U.S. consolidated group had approximately \$131.9 million of permanently reinvested unremitted earnings from certain foreign subsidiaries, and if these monies were ever needed to be remitted, the impact of any tax consequences on our overall liquidity position would not be material. As of December 31, 2016, our parent, Herbalife Ltd., had \$2.5 billion of permanently reinvested unremitted earnings relating to its operating subsidiaries. As of June 30, 2017, we do not have any plans to repatriate these unremitted earnings to our parent; therefore, we do not have any liquidity concerns relating to these unremitted earnings and related cash and cash equivalents. See Note 12, *Income Taxes*, to the Consolidated Financial Statements included in our 2016 10-K for additional discussion on our unremitted earnings.

Off-Balance Sheet Arrangements

At June 30, 2017 and December 31, 2016, we had no material off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K.

Dividends

The declaration of future dividends is subject to the discretion of our board of directors and will depend upon various factors, including our earnings, financial condition, Herbalife Ltd.'s available distributable reserves under Cayman Islands law, restrictions imposed by the Credit Facility and the terms of any other indebtedness that may be outstanding, cash requirements, future prospects and other factors deemed relevant by our board of directors.

Share Repurchases

On February 21, 2017, our board of directors authorized a new three-year \$1.5 billion share repurchase program that will expire on February 21, 2020, which replaced our prior share repurchase authorization which was set to expire on June 30, 2017 which, as of December 31, 2016, had \$232.9 million of remaining authorized capacity. This share repurchase program allows us, which includes an indirect wholly subsidiary of Herbalife Ltd., to repurchase our common shares, at such times and prices as determined by management as market conditions warrant. The Credit Facility permits us to repurchase common shares as long as no default or event of default exists and other conditions such as specified consolidated leverage ratios are met.

In conjunction with the issuance of the Convertible Notes during February 2014, we paid approximately \$685.8 million to enter into prepaid forward share repurchase transactions, or the Forward Transactions, with certain financial institutions, or the Forward Counterparties, pursuant to which we purchased approximately 9.9 million common shares, at an average cost of \$69.02 per share, for settlement on or around the August 15, 2019 maturity date for the Convertible Notes, subject to the ability of each Forward Counterparty to elect to settle all or a portion of its Forward Transactions early. The shares are treated as retired shares for basic and diluted EPS purposes although they remain legally outstanding. See Note 10, *Shareholders' Equity*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a further discussion on the Forward Transactions.

During the three months ended March 31, 2017, an indirect wholly owned subsidiary of the Company purchased 1.1 million of Herbalife Ltd.'s common shares through open market purchases at an aggregate cost of approximately \$60.7 million, or an average cost of \$56.10 per share, which reduced the Company's total shareholders' equity and is reflected at cost within the Company's accompanying condensed consolidated balance sheet. During the three months ended June 30, 2017, an indirect wholly owned subsidiary of the Company purchased 2.7 million of Herbalife Ltd.'s common shares through open market purchases at an aggregate cost of approximately \$179.8 million, or an average cost of \$67.06 per share, which reduced the Company's total shareholders' equity and is reflected at cost within the Company's accompanying condensed consolidated balance sheet. Although these shares are owned by the Company's indirect wholly owned subsidiary, they are reflected as treasury shares under U.S. GAAP and therefore reduce the number of common shares outstanding within our condensed consolidated financial statements and the weighted-average number of common shares outstanding used in calculating our earnings per share. The common shares of Herbalife Ltd. held by the indirect wholly owned subsidiary, however, remain outstanding on the books and records of the Company's transfer agent and therefore still carry voting and other share rights related to ownership of the Company's common shares, which may be exercised. We did not repurchase any common shares in the open market during the three and six months ended June 30, 2016. As of June 30, 2017, the remaining authorized capacity under our \$1.5 billion share repurchase program was \$1,259.5 million. See Note 10, *Shareholders' Equity*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion on our share repurchases.

Capped Call Transactions

In February 2014, in connection with the issuance of Convertible Notes, we paid approximately \$123.8 million to enter into capped call transactions with respect to our common shares, or the Capped Call Transactions, with certain financial institutions. The Capped Call Transactions are expected generally to reduce the potential dilution upon conversion of the Convertible Notes in the event that the market price of the common shares is greater than the strike price of the Capped Call Transactions, initially set at \$86.28 per common share, with such reduction of potential dilution subject to a cap based on the cap price initially set at \$120.79 per common share. See Note 10, *Shareholders' Equity*, to the Condensed Consolidated Financial Statements for a further discussion of the Capped Call Transactions.

Working Capital and Operating Activities

As of June 30, 2017 and December 31, 2016, we had positive working capital of \$1,406.6 million and \$671.0 million, respectively, or an increase of \$735.6 million. This increase was primarily due to the increase in cash and cash equivalents; partially offset by the increase in the current portion of long-term debt primarily related to the Credit Facility entered into on February 15, 2017.

We expect that cash and funds provided from operations, available borrowings under the Credit Facility, and access to capital markets will provide sufficient working capital to operate our business, to make expected capital expenditures and to meet foreseeable liquidity requirements, including payment of amounts outstanding under the Credit Facility, for the next twelve months and thereafter.

The majority of our purchases from suppliers are generally made in U.S. dollars, while sales to our Members generally are made in local currencies. Consequently, strengthening of the U.S. dollar versus a foreign currency can have a negative impact on net sales and contribution margins and can generate transaction gains or losses on intercompany transactions. For discussion of our foreign exchange contracts and other hedging arrangements, see Part I, Item 3 of this Quarterly Report on Form 10-Q — *Quantitative and Qualitative Disclosures about Market Risk*.

Contingencies

See Note 5, *Contingencies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion of our contingencies as of June 30, 2017.

Subsequent Events

See Note 14, *Subsequent Events*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for information regarding subsequent events.

Critical Accounting Policies

U.S. GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the year. We regularly evaluate our estimates and assumptions related to revenue recognition, allowance for product returns, inventory, goodwill and purchased intangible asset valuations, deferred income tax asset valuation allowances, uncertain tax positions, tax contingencies, and other loss contingencies. We base our estimates and assumptions on current facts, historical experience and various other factors that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the recording of revenue, costs and expenses. Actual results could differ from those estimates. We consider the following policies to be most critical in understanding the judgments that are involved in preparing the financial statements and the uncertainties that could impact our operating results, financial condition and cash flows.

We are a nutrition company that sells a wide range of weight management, targeted nutrition, energy, sports & fitness, and outer nutrition products. Our products are manufactured by us in our Changsha, Hunan, China extraction facility, Suzhou, China facility, Nanjing, China facility, Lake Forest, California facility, and in our Winston-Salem, North Carolina facility, and by third party providers, and then are sold to Members who consume and sell Herbalife products to retail consumers or other Members. As of June 30, 2017, we sold products in 94 countries throughout the world and we are organized and managed by geographic region. We aggregate our operating segments into one reporting segment, except China, as management believes that our operating segments have similar operating characteristics and similar long term operating performance. In making this determination, management believes that the operating segments are similar in the nature of the products sold, the product acquisition process, the types of customers to whom products are sold, the methods used to distribute the products, the nature of the regulatory environment, and their economic characteristics.

We generally recognize revenue upon delivery and when both the title and risk and rewards pass to the Member or importer, or as products are sold in China to and through independent service providers, sales representatives, and sales officers to customers and preferred customers, as well as through Company-operated retail stores when necessary. Product sales are recognized net of product returns, and discounts referred to as "distributor allowances." We generally receive the net sales price in cash or through credit card payments at the point of sale. Royalty overrides are generally recorded when revenue is recognized. See Note 2, *Significant Accounting Policies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for a further discussion of distributor compensation in the U.S.

Allowances for product returns, primarily in connection with our buyback program, are provided at the time the sale is recorded. This accrual is based upon historical return rates for each country and the relevant return pattern, which reflects anticipated returns to be received over a period of up to 12 months following the original sale. Historically, product returns and buybacks have not been significant. Product returns and buybacks were approximately 0.1% for both the three and six months ended June 30, 2017 and 2016.

We adjust our inventories to lower of cost and net realizable value. Additionally we adjust the carrying value of our inventory based on assumptions regarding future demand for our products and market conditions. If future demand and market conditions are less favorable than management's assumptions, additional inventory write-downs could be required. Likewise, favorable future demand and market conditions could positively impact future operating results if previously written down inventories are sold. We have obsolete and slow moving inventories which have been adjusted downward \$30.5 million and \$25.5 million to present them at their lower of cost and net realizable value in our condensed consolidated balance sheets as of June 30, 2017 and December 31, 2016, respectively.

Goodwill and marketing related intangible assets not subject to amortization are tested annually for impairment, and are tested for impairment more frequently if events and circumstances indicate that the asset might be impaired. An impairment loss is recognized to the extent that the carrying amount exceeds the asset's fair value. As discussed below, for goodwill impairment testing, we have the option to perform a qualitative assessment of whether it is more likely than not that a reporting unit's fair value is less than its carrying amount before applying the two-step goodwill impairment test. If we conclude it is not more likely than not that the fair value of a reporting unit is less than its carrying amount, then there is no need to perform the two-step impairment test. Currently, we do not use this qualitative assessment option but we could in the future elect to use this option. For our marketing related intangible assets a similar qualitative option is also currently available. However, we currently use a discounted cash flow model, or the income approach, under the relief-from-royalty method to determine the fair value of our marketing related intangible assets in order to confirm there is no impairment required. For our marketing related intangible assets, if we do not use this qualitative assessment option, we could still in the future elect to use this option.

In order to estimate the fair value of goodwill, we also primarily use an income approach. The determination of impairment is made at the reporting unit level and consists of two steps. First, we determine the fair value of a reporting unit and compare it to its carrying amount. The determination of the fair value of the reporting units requires us to make significant estimates and assumptions. These estimates and assumptions include estimates of future revenues and expense growth rates, capital expenditures and the depreciation and amortization related to these capital expenditures, discount rates, and other inputs. Due to the inherent uncertainty involved in making these estimates, actual future results could differ. Changes in assumptions regarding future results or other underlying assumptions could have a significant impact on the fair value of the reporting unit. Second, if the carrying amount of a reporting unit exceeds its fair value, an impairment loss is recognized for any excess of the carrying amount of the reporting unit's goodwill and other intangibles over the implied fair value as determined in Step 2 of the goodwill impairment test. Also, if during Step 1 of a goodwill impairment test we determine we have reporting units with zero or negative carrying amounts, then we perform Step 2 of the goodwill impairment test if it is more likely than not that a goodwill impairment exists. During Step 2 of a goodwill impairment test, the implied fair value of goodwill is determined in a similar manner as how the amount of goodwill recognized in a business combination is determined, in accordance with the Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, Topic 805, Business Combinations. We would assign the fair value of a reporting unit to all of the assets and liabilities of that reporting unit as if the reporting unit had been acquired in a business combination and the fair value of the reporting unit was the price paid to acquire the reporting unit. The excess of the fair value of a reporting unit over the amounts assigned to its assets and liabilities is the implied fair value of goodwill. As of June 30, 2017 and December 31, 2016, we had goodwill of approximately \$94.6 million and \$89.9 million, respectively. As of both June 30, 2017 and December 31, 2016, we had marketing related intangible assets of approximately \$310 million. The increase in goodwill during the six months ended June 30, 2017 was due to cumulative translation adjustments. No marketing related intangibles or goodwill impairment was recorded during the three and six months ended June 30, 2017 and 2016.

Contingencies are accounted for in accordance with FASB ASC Topic 450, Contingencies, or ASC 450. ASC 450 requires that we record an estimated loss from a loss contingency when information available prior to issuance of our financial statements indicates that it is probable that an asset has been impaired or a liability has been incurred at the date of the financial statements and the amount of the loss can be reasonably estimated. We also disclose material contingencies when we believe a loss is not probable but reasonably possible as required by ASC 450. Accounting for contingencies such as legal and non-income tax matters requires us to use judgment related to both the likelihood of a loss and the estimate of the amount or range of loss. Many of these legal and tax contingencies can take years to be resolved. Generally, as the time period increases over which the uncertainties are resolved, the likelihood of changes to the estimate of the ultimate outcome increases.

The Company evaluates the realizability of its deferred tax assets by assessing the valuation allowance and by adjusting the amount of such allowance, if necessary. Although realization is not assured, we believe it is more likely than not that the net carrying value will be realized. The amount of the carryforwards that is considered realizable, however, could change if estimates of future taxable income are adjusted. In the ordinary course of our business, there are many transactions and calculations where the tax law and ultimate tax determination is uncertain. As part of the process of preparing our consolidated financial statements, we are required to estimate our income taxes in each of the jurisdictions in which we operate prior to the completion and filing of tax returns for such periods. These estimates involve complex issues and require us to make judgments about the likely application of the tax law to our situation, as well as with respect to other matters, such as anticipating the positions that we will take on tax returns prior to us actually preparing the returns and the outcomes of disputes with tax authorities. The ultimate resolution of these issues may take extended periods of time due to examinations by tax authorities and statutes of limitations. In addition, changes in our business, including acquisitions, changes in our international corporate structure, changes in the geographic location of business functions or assets, changes in the geographic mix and amount of income, as well as changes in our agreements with tax authorities, valuation allowances, applicable accounting rules, applicable tax laws and regulations, rulings and interpretations thereof, developments in tax audit and other matters, and variations in the estimated and actual level of annual pre-tax income can affect the overall effective income tax rate.

We account for uncertain tax positions in accordance with FASB ASC Topic 740, Income Taxes, or ASC 740, which provides guidance on the determination of how tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC 740, we must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate resolution.

We account for foreign currency transactions in accordance with FASB ASC Topic 830, Foreign Currency Matters. In a majority of the countries where we operate, the functional currency is the local currency. Our foreign subsidiaries' asset and liability accounts are translated for consolidated financial reporting purposes into U.S. dollar amounts at period-end exchange rates. Revenue and expense accounts are translated at the average rates during the year. Our foreign exchange translation adjustments are included in accumulated other comprehensive loss on our accompanying condensed consolidated balance sheets. Foreign currency transaction gains and losses and foreign currency remeasurements are generally included in selling, general and administrative expenses in the accompanying condensed consolidated statements of income (loss).

New Accounting Pronouncements

See discussion under Note 2, *Significant Accounting Policies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, for information on new accounting pronouncements.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

We are exposed to market risks, which arise during the normal course of business from changes in interest rates and foreign currency exchange rates. On a selected basis, we use derivative financial instruments to manage or hedge these risks. All hedging transactions are authorized and executed pursuant to written guidelines and procedures.

We apply FASB ASC Topic 815, *Derivatives and Hedging*, or ASC 815, which established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. All derivatives, whether designated in hedging relationships or not, are required to be recorded on the balance sheet at fair value. If the derivative is designated as a fair-value hedge, the changes in the fair value of the derivative and the underlying hedged item are recognized concurrently in earnings. If the derivative is designated as a cash-flow hedge, changes in the fair value of the derivative are recorded in other comprehensive income (loss) and are recognized in the condensed consolidated statements of income (loss) when the hedged item affects earnings. ASC 815 defines the requirements for designation and documentation of hedging relationships as well as ongoing effectiveness assessments in order to use hedge accounting. For a derivative that does not qualify as a hedge, changes in fair value are recognized concurrently in earnings.

A discussion of our primary market risk exposures and derivatives is presented below.

Foreign Exchange Risk

We transact business globally and are subject to risks associated with changes in foreign exchange rates. Our objective is to minimize the impact to earnings and cash flow associated with foreign exchange rate fluctuations. We enter into foreign exchange derivatives in the ordinary course of business primarily to reduce exposure to currency fluctuations attributable to intercompany transactions, translation of local currency revenue, inventory purchases subject to foreign currency exposure, and to partially mitigate the impact of foreign currency rate fluctuations. Due to volatility in foreign exchange markets, our current strategy, in general, is to hedge some of the significant exposures on a short-term basis. We will continue to monitor the foreign exchange markets and evaluate our hedging strategy accordingly. With the exception of our foreign exchange forward contracts relating to forecasted inventory purchases and intercompany management fees discussed below, all of our foreign exchange contracts are designated as free standing derivatives for which hedge accounting does not apply. The changes in the fair value of the derivatives not qualifying as cash flow hedges are included in selling, general and administrative expenses in our condensed consolidated statements of income (loss).

The foreign exchange forward contracts designated as free standing derivatives are used to hedge advances between subsidiaries and to partially mitigate the impact of foreign currency fluctuations. The fair value of foreign exchange derivative contracts is based on third-party quotes. Our foreign currency derivative contracts are generally executed on a monthly basis.

We also purchase foreign currency forward contracts in order to hedge forecasted inventory transactions and intercompany management fees that are designated as cash-flow hedges and are subject to foreign currency exposures. We applied the hedge accounting rules as required by ASC 815 for these hedges. These contracts allow us to buy and sell certain currencies at specified contract rates. As of June 30, 2017 and December 31, 2016, the aggregate notional amounts of these contracts outstanding were approximately \$126.9 million and \$90.0 million, respectively. At June 30, 2017, the outstanding contracts were expected to mature over the next fifteen months. Our derivative financial instruments are recorded on the condensed consolidated balance sheet at fair value based on quoted market rates. For the forecasted inventory transactions, the forward contracts are used to hedge forecasted inventory transactions over specific months. Changes in the fair value of these forward contracts, excluding forward points, designated as cash-flow hedges are recorded as a component of accumulated other comprehensive income (loss) within shareholders' equity, and are recognized in cost of sales in the condensed consolidated statements of income (loss) during the period which approximates the time the hedged inventory is sold. We also hedge forecasted intercompany management fees over specific months. Changes in the fair value of these forward contracts designated as cash flow hedges are recorded as a component of accumulated other comprehensive income (loss) within shareholders' equity, and are recognized in selling, general and administrative expenses in the condensed consolidated statements of income (loss) in the period when the hedged item and underlying transaction affects earnings. As of June 30, 2017, we recorded assets at fair value of 0.1 million and liabilities at fair value of \$5.9 million relating to all outstanding foreign currency contracts designated as cash-flow hedges. As of December 31, 2016, we recorded assets at fair value of \$4.6 million relating to all outstanding foreign currency contracts designated as cash-flow hedges. During the three and six months ended June 30, 2017 and 2016, the ineffective portion relating to these hedges was immaterial and the hedges remained effective as of June 30, 2017 and December 31, 2016.

As of June 30, 2017 and December 31, 2016, the majority of our outstanding foreign currency forward contracts had maturity dates of less than twelve months with the majority of freestanding derivatives expiring within two months and one month as of June 30, 2017 and December 31, 2016, respectively.

The following table provides information about the details of our foreign exchange forward contracts:

<u>Foreign Currency</u>	<u>Average Contract Rate</u>	<u>Notional Amount</u> (In millions)	<u>Fair Value Gain (Loss)</u> (In millions)
At June 30, 2017			
Buy Argentine peso sell Euro	19.38	\$ 1.4	\$ —
Buy Chinese yuan sell Euro	7.70	27.7	(0.4)
Buy Colombian peso sell U.S. dollar	3,048.00	0.8	—
Buy Euro sell Argentine peso	17.24	5.1	0.6
Buy Euro sell Australian dollar	1.48	3.9	—
Buy Euro sell Brazilian real	3.80	0.9	—
Buy Euro sell Chilean peso	742.65	0.9	—
Buy Euro sell Ghanaian cedi	5.10	2.6	—
Buy Euro sell Hong Kong dollar	8.77	13.3	0.3
Buy Euro sell Indonesian rupiah	15,057.61	6.2	0.1
Buy Euro sell Japanese yen	128.14	0.6	—
Buy Euro sell Mexican peso	21.80	85.2	(2.5)
Buy Euro sell Peruvian sol	3.71	3.3	—
Buy Euro sell Philippine peso	56.74	4.0	0.1
Buy Euro sell Russian ruble	68.30	1.4	—
Buy Euro sell Thai baht	38.12	1.5	—
Buy Euro sell Taiwan dollar	34.95	1.1	—
Buy Euro sell U.S. dollar	1.13	33.1	0.5
Buy Euro sell South African rand	14.72	2.7	0.1
Buy British pound sell Euro	0.88	3.2	—
Buy British pound sell U.S. dollar	1.25	2.6	0.1
Buy Indonesian rupiah sell Euro	14,903.00	3.2	(0.1)
Buy Indonesian rupiah sell U.S. dollar	13,582.25	6.3	0.1
Buy South Korean won sell U.S. dollar	1,142.30	5.1	—
Buy Kazakhstani tenge sell U.S. dollar	332.25	0.9	—
Buy Mexican peso sell Euro	20.99	14.2	—
Buy Norwegian krone sell U.S. dollar	8.47	1.2	—
Buy Swedish krona sell U.S. dollar	8.77	2.8	0.1
Buy Taiwan dollar sell U.S. dollar	30.22	18.2	(0.1)
Buy U.S. dollar sell Chilean peso	3,022.27	1.5	—
Buy U.S. dollar sell Euro	1.11	132.3	(4.7)
Buy U.S. dollar sell British pound	1.27	4.5	(0.1)
Buy U.S. dollar sell Japanese yen	110.97	0.5	—
Buy U.S. dollar sell South African rand	13.17	2.8	—
Total forward contracts		<u>\$ 395.0</u>	<u>\$ (5.9)</u>

The majority of our foreign subsidiaries designate their local currencies as their functional currencies. See *Liquidity and Capital Resources — Cash and cash equivalents* in Part I, Item 2, *Management's Discussion and Analysis of Financial Condition and Results of Operations*, for further discussion of our foreign subsidiary cash and cash equivalents.

Interest Rate Risk

As of June 30, 2017, the aggregate annual maturities of the Credit Facility were expected to be \$48.8 million for the remainder of 2017, \$97.5 million for 2018, \$97.5 million for 2019, \$97.5 million for 2020, \$97.5 million for 2021, \$97.5 million for 2022, and \$739.4 million for 2023. As of June 30, 2017, the fair value of the Term Loan was approximately \$1.28 billion and the carrying value was \$1,235.0 million. There were no outstanding borrowings on the Revolving Credit Facility as of June 30, 2017. The fair value of the Prior Credit Facility approximated its carrying value of \$410.0 million as of December 31, 2016. The Credit Facility bears and the Prior Credit Facility bore variable interest rates, and on June 30, 2017 and December 31, 2016, the weighted average interest rate of the Credit Facility and the Prior Credit Facility was 6.53% and 4.29%, respectively. As of June 30, 2017 the fair value of the liability component of our \$1.15 billion Convertible Notes was approximately \$1,064.5 million and the carrying value was \$1,047.0 million. As of December 31, 2016, the fair value of the liability component of our \$1.15 billion Convertible Notes was approximately \$961.3 million and the carrying value was \$1,024.8 million. The Convertible Notes pay interest at a fixed rate of 2.00% per annum payable semiannually in arrears on February 15 and August 15 of each year, beginning on August 15, 2014. The Convertible Notes mature on August 15, 2019, unless earlier repurchased or converted. We may not redeem the Convertible Notes prior to their stated maturity date. Since our Credit Facility is based on variable interest rates, and as we have not entered into any interest swap arrangements, if interest rates were to increase or decrease by 1% for the year, our annual interest expense could increase or decrease by approximately \$13 million.

Item 4. Controls And Procedures

Evaluation of Disclosure Controls and Procedures. Our management, including our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, or the Exchange Act) as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on such evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of June 30, 2017.

Changes in Internal Control over Financial Reporting. There were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the quarter ended June 30, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

FORWARD-LOOKING STATEMENTS

This document contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact are “forward-looking statements” for purposes of federal and state securities laws, including any projections of earnings, revenue or other financial items; any statements of the plans, strategies and objectives of management for future operations; any statements concerning proposed new services or developments; any statements regarding future economic conditions or performance; any statements of belief; and any statements of assumptions underlying any of the foregoing. Forward-looking statements may include the words “may,” “will,” “estimate,” “intend,” “continue,” “believe,” “expect” or “anticipate” and any other similar words.

Although we believe that the expectations reflected in any of our forward-looking statements are reasonable, actual results could differ materially from those projected or assumed in any of our forward-looking statements. Our future financial condition and results of operations, as well as any forward-looking statements, are subject to change and to inherent risks and uncertainties, such as those disclosed or incorporated by reference in our filings with the Securities and Exchange Commission. Important factors that could cause our actual results, performance and achievements, or industry results to differ materially from estimates or projections contained in our forward-looking statements include, among others, the following:

- our relationship with, and our ability to influence the actions of, our Members;
- improper action by our employees or Members in violation of applicable law;
- adverse publicity associated with our products or network marketing organization, including our ability to comfort the marketplace and regulators regarding our compliance with applicable laws;
- changing consumer preferences and demands;
- the competitive nature of our business;
- regulatory matters governing our products, including potential governmental or regulatory actions concerning the safety or efficacy of our products and network marketing program, including the direct selling market in which we operate;
- legal challenges to our network marketing program;
- the consent order entered into with the FTC, the effects thereof and any failure to comply therewith;
- risks associated with operating internationally and the effect of economic factors, including foreign exchange, inflation, disruptions or conflicts with our third party importers, pricing and currency devaluation risks, especially in countries such as Venezuela;
- uncertainties relating to interpretation and enforcement of legislation in China governing direct selling and anti-pyramiding;
- our inability to obtain the necessary licenses to expand our direct selling business in China;
- adverse changes in the Chinese economy;
- our dependence on increased penetration of existing markets;
- contractual limitations on our ability to expand our business;
- our reliance on our information technology infrastructure and outside manufacturers;
- the sufficiency of trademarks and other intellectual property rights;
- product concentration;
- our reliance upon, or the loss or departure of any member of, our senior management team which could negatively impact our Member relations and operating results;
- U.S. and foreign laws and regulations applicable to our international operations;
- uncertainties relating to the United Kingdom’s vote to exit from the European Union;
- restrictions imposed by covenants in our credit facility;
- uncertainties relating to the application of transfer pricing, duties, value added taxes, and other tax regulations, and changes thereto;
- changes in tax laws, treaties or regulations, or their interpretation;

- taxation relating to our Members;
- product liability claims;
- our incorporation under the laws of the Cayman Islands;
- whether we will purchase any of our shares in the open markets or otherwise; and
- share price volatility related to, among other things, speculative trading and certain traders shorting our common shares.

Additional factors that could cause actual results to differ materially from our forward-looking statements are set forth in this Quarterly Report on Form 10-Q, including under the heading “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and in our Condensed Consolidated Financial Statements and the related Notes.

Forward-looking statements in this Quarterly Report on Form 10-Q speak only as of the date hereof, and forward-looking statements in documents attached that are incorporated by reference speak only as of the date of those documents. We do not undertake any obligation to update or release any revisions to any forward-looking statement or to report any events or circumstances after the date hereof or to reflect the occurrence of unanticipated events, except as required by law.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

See discussion under Note 5, *Contingencies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q, which is incorporated herein by reference.

Item 1A. RISK FACTORS

Risks Related to Us and Our Business

Our failure to establish and maintain Member and sales leader relationships for any reason could negatively impact sales of our products and harm our financial condition and operating results.

We distribute our products exclusively to and through independent Members, and we depend upon them directly for substantially all of our sales. Our Members, including our sales leaders, may voluntarily terminate their Member agreements with us at any time. To increase our revenue, we must increase the number of, or the productivity of, our Members. Accordingly, our success depends in significant part upon our ability to recruit, retain and motivate a large base of Members. The loss of a significant number of Members for any reason could negatively impact sales of our products and could impair our ability to attract new Members. In our efforts to attract and retain Members, we compete with other network marketing organizations, including those in the weight management, dietary and nutritional supplement and personal care and cosmetic product industries. Our operating results could be harmed if our existing and new business opportunities and products do not generate sufficient interest to retain existing Members and attract new Members.

Our Member organization has a high turnover rate, which is a common characteristic found in the direct selling industry. See Item 2, *Management’s Discussion and Analysis of Financial Condition and Results of Operations*, of this Quarterly Report on Form 10-Q for additional information regarding sales leader retention rates.

Because we cannot exert the same level of influence or control over our independent Members as we could were they our own employees, our Members could fail to comply with applicable law or our Member policies and procedures, which could result in claims against us that could harm our financial condition and operating results.

Our Members are independent contractors and, accordingly, we are not in a position to directly provide the same direction, motivation and oversight as we would if Members were our own employees. As a result, there can be no assurance that our Members will participate in our marketing strategies or plans, accept our introduction of new products, or comply with our Members policies and procedures.

Extensive federal, state and local laws regulate our business, products and network marketing program. Because we have expanded into foreign countries, our policies and procedures for our independent Members differ due to the different legal requirements of each country in which we do business. While we have implemented Member policies and procedures designed to govern Member conduct and to protect the goodwill associated with Herbalife trademarks and tradenames, it can be difficult to enforce these policies and procedures because of the large number of Members and their independent status. Violations by our independent Members of applicable law or of our policies and procedures in dealing with customers could reflect negatively on our products and operations and harm our business reputation. In addition, it is possible that a court could hold us civilly or criminally accountable based on vicarious liability because of the actions of our independent Members.

Adverse publicity associated with our products, ingredients or network marketing program, or those of similar companies, could harm our financial condition and operating results.

The size of our distribution force and the results of our operations may be significantly affected by the public's perception of the Company and similar companies. This perception is dependent upon opinions concerning:

- the safety and quality of our products and ingredients;
- the safety and quality of similar products and ingredients distributed by other companies;
- our Members;
- our network marketing program; and
- the direct selling business generally.

Adverse publicity concerning any actual or purported failure of our Company or our Members to comply with applicable laws and regulations regarding product claims and advertising, good manufacturing practices, the regulation of our network marketing program, the registration of our products for sale in our target markets or other aspects of our business, whether or not resulting in enforcement actions or the imposition of penalties, could have an adverse effect on the goodwill of our Company and could negatively affect our ability to attract, motivate and retain Members, which would negatively impact our ability to generate revenue. We cannot ensure that all of our Members will comply with applicable legal requirements relating to the advertising, labeling, licensing or distribution of our products.

In addition, our Members' and consumers' perception of the safety and quality of our products and ingredients as well as similar products and ingredients distributed by other companies can be significantly influenced by media attention, publicized scientific research or findings, widespread product liability claims and other publicity concerning our products or ingredients or similar products and ingredients distributed by other companies. Adverse publicity, whether or not accurate or resulting from consumers' use or misuse of our products, that associates consumption of our products or ingredients, or any similar products or ingredients with illness or other adverse effects, questions the benefits of our or similar products or claims that any such products are ineffective, inappropriately labeled or have inaccurate instructions as to their use, could lead to lawsuits or other legal challenges and could negatively impact our reputation, the market demand for our products, or our general business.

From time to time, we receive inquiries from government agencies and third parties requesting information concerning our products. We fully cooperate with these inquiries including, when requested, by the submission of detailed technical dossiers addressing product composition, manufacturing, process control, quality assurance, and contaminant testing. Further, we periodically respond to requests from regulators for additional information regarding product-specific adverse events. We are confident in the safety of our products when used as directed. However, there can be no assurance that regulators in these or other markets will not take actions that might delay or prevent the introduction of new products, or require the reformulation or the temporary or permanent withdrawal of certain of our existing products from their markets.

Adverse publicity relating to us, our products or our operations, including our network marketing program or the attractiveness or viability of the financial opportunities provided thereby, has had, and could again have, a negative effect on our ability to attract, motivate and retain Members, and it could also affect our share price. In the mid-1980s, our products and marketing program became the subject of regulatory scrutiny in the United States, resulting in large part from claims and representations made about our products by our Members, including impermissible therapeutic claims. The resulting adverse publicity caused a rapid, substantial loss of Members in the United States and a corresponding reduction in sales beginning in 1985. In addition, in late 2012, a hedge fund manager publicly raised allegations regarding the legality of our network marketing program and announced that his fund had taken a significant short position regarding our common shares, leading to intense public scrutiny and governmental inquiries, and significant stock price volatility. We expect that negative publicity will, from time to time, continue to negatively impact our business in particular markets and may adversely affect our share price.

Our failure to appropriately respond to changing consumer preferences and demand for new products or product enhancements could significantly harm our Member and customer relationships and product sales and harm our financial condition and operating results.

Our business is subject to changing consumer trends and preferences, especially with respect to weight management products. Our continued success depends in part on our ability to anticipate and respond to these changes, and we may not respond in a timely or commercially appropriate manner to such changes. Furthermore, the nutritional supplement industry is characterized by rapid and frequent changes in demand for products and new product introductions and enhancements. Our failure to accurately predict these trends could negatively impact consumer opinion of our products, which in turn could harm our customer and Member relationships and cause the loss of sales. The success of our new product offerings and enhancements depends upon a number of factors, including our ability to:

- accurately anticipate customer needs;
- innovate and develop new products or product enhancements that meet these needs;
- successfully commercialize new products or product enhancements in a timely manner;
- price our products competitively;
- manufacture and deliver our products in sufficient volumes and in a timely manner; and
- differentiate our product offerings from those of our competitors.

If we do not introduce new products or make enhancements to meet the changing needs of our customers in a timely manner, some of our products could be rendered obsolete, which could negatively impact our revenues, financial condition and operating results.

Due to the high level of competition in our industry, we might fail to retain our customers and Members, which would harm our financial condition and operating results.

The business of marketing weight management and nutrition products is highly competitive and sensitive to the introduction of new products or weight management plans, including various prescription drugs, which may rapidly capture a significant share of the market. These market segments include numerous manufacturers, distributors, marketers, retailers and physicians that actively compete for the business of consumers both in the United States and abroad. In addition, we anticipate that we will be subject to increasing competition in the future from sellers that utilize electronic commerce. Some of these competitors have longer operating histories, significantly greater financial, technical, product development, marketing and sales resources, greater name recognition, larger established customer bases and better-developed distribution channels than we do. Our present or future competitors may be able to develop products that are comparable or superior to those we offer, adapt more quickly than we do to new technologies, evolving industry trends and standards or customer requirements, or devote greater resources to the development, promotion and sale of their products than we do. For example, if our competitors develop other diet or weight management products that prove to be more effective than our products, demand for our products could be reduced. Accordingly, we may not be able to compete effectively in our markets and competition may intensify.

We are also subject to significant competition for the recruitment of Members from other network marketing organizations, including those that market weight management products, dietary and nutritional supplements and personal care products as well as other types of products. We compete for global customers and Members with regard to weight management, nutritional supplement and personal care products. Our competitors include both direct selling companies such as NuSkin Enterprises, Nature's Sunshine, Altacor/Amway, Melaleuca, Avon Products, Oriflame, Omnilife, Tupperware and Mary Kay, as well as retail establishments such as Weight Watchers, Jenny Craig, General Nutrition Centers, Wal-Mart and retail pharmacies.

In addition, because the industry in which we operate is not particularly capital intensive or otherwise subject to high barriers to entry, it is relatively easy for new competitors to emerge who will compete with us for our Members and customers. In addition, the fact that our Members may easily enter and exit our network marketing program contributes to the level of competition that we face. For example, a Member can enter or exit our network marketing system with relative ease at any time without facing a significant investment or loss of capital because (1) we have a low upfront financial cost to become a Herbalife Member, (2) we do not require any specific amount of time to work as a Member, (3) we do not charge Members for any training that we might require, (4) we do not prohibit a new Member from working with another company, and (5) in substantially all jurisdictions, we maintain a buyback program pursuant to which we will repurchase products sold to a Member who has decided to leave the business. Our ability to remain competitive therefore depends, in significant part, on our success in recruiting and retaining Members through an attractive compensation plan, the maintenance of an attractive product portfolio and other incentives. We cannot ensure that our programs for recruitment and retention of Members will be successful and if they are not, our financial condition and operating results would be harmed.

We are affected by extensive laws, governmental regulations, administrative determinations, court decisions and similar constraints both domestically and abroad, and our failure or our Members' failure to comply with these constraints could lead to the imposition of significant penalties or claims, which could harm our financial condition and operating results.

In both domestic and foreign markets, the formulation, manufacturing, packaging, labeling, distribution, advertising, importation, exportation, licensing, sale and storage of our products are affected by extensive laws, governmental regulations, administrative determinations, court decisions and other similar constraints. Such laws, regulations and other constraints may exist at the federal, state or local levels in the United States and at all levels of government in foreign jurisdictions. There can be no assurance that we or our Members are in compliance with all of these regulations. Our failure or our Members' failure to comply with these regulations or new regulations could disrupt our Members' sale of our products, or lead to the imposition of significant penalties or claims and could negatively impact our business. In addition, the adoption of new regulations or changes in the interpretations of existing regulations, such as those relating to genetically modified foods, may result in significant compliance costs or discontinuation of product sales and may negatively impact the marketing of our products, resulting in significant loss of sales revenues.

The Consent Order prohibits us from making, or allowing our Members to make, any representation regarding the amount or level of income, including full-time or part-time income, that a participant can reasonably expect to earn in our network marketing program, unless the representation is non-misleading and we possess competent and reliable evidence sufficient to substantiate that the representation is true. The Consent Order also prohibits us and other persons who act in active concert with us from representing that participation in the network marketing program will result in a lavish lifestyle and from using images or descriptions to represent or imply that participation in the program is likely to result in a lavish lifestyle. In addition, the Consent Order prohibits specified misrepresentations in connection with marketing the program, including misrepresentations regarding any fact material to participation such as the cost to participate or the amount of income likely to be earned. The Consent Order also requires us to clearly and conspicuously disclose all information material to participation in the marketing program, including our refund and buyback policy before the participant pays any money to us.

The FTC revised its Guides Concerning the Use of Endorsements and Testimonials in Advertising, or Guides, which became effective on December 1, 2009. Although the Guides are not binding, they explain how the FTC interprets Section 5 of the FTC Act's prohibition on unfair or deceptive acts or practices. Consequently, the FTC could bring a Section 5 enforcement action based on practices that are inconsistent with the Guides. Under the revised Guides, advertisements that feature a consumer and convey his or her atypical experience with a product or service are required to clearly disclose the results that consumers can generally expect. In contrast to the 1980 version of the Guides, which allowed advertisers to describe atypical results in a testimonial as long as they included a disclaimer such as "results not typical", the revised Guides no longer contain such a safe harbor. The revised Guides also add new examples to illustrate the long-standing principle that "material connections" between advertisers and endorsers (such as payments or free products), connections that consumers might not expect, must be disclosed. Herbalife has revised its marketing materials to be compliant with the revised Guides and the Consent Order. However, it is possible that our use, and that of our Members, of testimonials in the advertising and promotion of our products, including but not limited to our weight management products and our income opportunity, will be significantly impacted and therefore might negatively impact our sales.

Governmental regulations in countries where we plan to commence or expand operations may prevent or delay entry into those markets. In addition, our ability to sustain satisfactory levels of sales in our markets is dependent in significant part on our ability to introduce additional products into such markets. However, governmental regulations in our markets, both domestic and international, can delay or prevent the introduction, or require the reformulation or withdrawal, of certain of our products. Any such regulatory action, whether or not it results in a final determination adverse to us, could create negative publicity, with detrimental effects on the motivation and recruitment of Members and, consequently, on sales.

We are subject to rules of the Food and Drug Administration, or FDA, for current good manufacturing practices, or cGMPs, for the manufacture, packing, labeling and holding of dietary supplements and over-the-counter drugs distributed in the United States. Herbalife has implemented a comprehensive quality assurance program that is designed to maintain compliance with the cGMPs products manufactured by or on behalf of Herbalife for distribution in the United States. However, if Herbalife should be found not to be in compliance with cGMPs for the products we self-manufacture, it could negatively impact our reputation and ability to sell our products even after any such situation had been rectified. Further, if contract manufacturers whose products bear Herbalife labels fail to comply with the cGMPs, this could negatively impact Herbalife's reputation and ability to sell its products even though Herbalife is not directly liable under the cGMPs for such compliance. In complying with the dietary supplement cGMPs, we have experienced increases in production costs as a result of the necessary increase in testing of raw ingredients, work in process and finished products.

Since late 2012, a hedge fund manager has made and continues to make allegations regarding the Company and its network marketing program. We believe these allegations are without merit and are vigorously defending ourselves against such claims, including proactively reaching out to governmental authorities about what we believe is manipulative activity with respect to our securities. Because of these allegations, we and others have received and may receive additional regulatory and governmental inquiries. For example, we have previously disclosed inquiries from the FTC, SEC and other governmental authorities. In the future, these and other governmental authorities may determine to seek information from us and other persons relating to these same or other allegations. If we believe any governmental or regulatory inquiry or investigation is or becomes material, it will be disclosed individually. Consistent with our policies, we have cooperated and will continue to fully cooperate with any governmental or regulatory inquiries or investigations.

Our network marketing program could be found to be not in compliance with current or newly adopted laws or regulations in one or more markets, which could prevent us from conducting our business in these markets or require us to alter compensation practices under our network marketing program, and harm our financial condition and operating results.

Our network marketing program is subject to a number of federal and state regulations administered by the FTC and various federal and state agencies in the United States as well as regulations on direct selling in foreign markets administered by foreign agencies. We are subject to the risk that, in one or more markets, our network marketing program could be found by federal, state or foreign regulators not to be in compliance with applicable law or regulations or we may be required to alter compensation practices under our network marketing program in order to comply with applicable law or regulations. As previously disclosed, we entered into the Consent Order with the FTC to settle the FTC's multi-year investigation into our business for compliance with these regulations. Another example is the 1986 permanent injunction entered in California in proceedings initiated by the California Attorney General. There can be no assurances other federal, state attorneys general or foreign regulators will not take similar action.

Regulations applicable to network marketing organizations generally are directed at preventing fraudulent or deceptive schemes, sometimes referred to as "pyramid" or "chain sales" schemes, by ensuring that product sales ultimately are made to consumers and that advancement within an organization is based on sales of the organization's products rather than investments in the organization or other non-retail sales-related criteria. The regulatory requirements concerning network marketing programs do not include "bright line" rules and are inherently fact-based and, thus, we are subject to the risk that these laws or regulations or the enforcement or interpretation of these laws and regulations by governmental agencies or courts can change. While we believe we are in compliance with these regulations, including those enforced by the FTC and the permanent injunction in California, and are compliant with the Consent Order, there is no assurance any federal, state or foreign courts or agencies or the independent compliance auditor under the Consent Order would agree, including a federal court or the FTC in respect of the Consent Order or a court or the California Attorney General in respect to the permanent injunction.

The ambiguity surrounding these laws can also affect the public perception of the Company. Specifically, in late 2012, a hedge fund manager publicly raised allegations regarding the legality of our network marketing program and announced that his fund had taken a significant short position regarding our common shares, leading to intense public scrutiny and significant stock price volatility. The failure of our network marketing program to comply with current or newly adopted regulations, the Consent Order or California injunction or any allegations or charges to that effect brought by federal, state, or foreign regulators could negatively impact our business in a particular market or in general and may adversely affect our share price.

We are also subject to the risk of private party challenges to the legality of our network marketing program, whether as a result of the Consent Order or otherwise. Some network marketing programs of other companies have been successfully challenged in the past, while other challenges to network marketing programs of other companies have been defeated. Adverse judicial determinations with respect to our network marketing program, or in proceedings not involving us directly but which challenge the legality of network marketing systems, in any other market in which we operate, could negatively impact our business.

We are subject to the Consent Order with the FTC, the effects of which, or any failure to comply therewith, could harm our financial condition and operating results.

As previously disclosed, on July 15, 2016, we reached a consensual resolution with the FTC regarding its multi-year investigation of our business resulting in the entry into a Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment in the U.S. District Court for the Central District of California. The Consent Order became effective on July 25, 2016 upon final approval by the Court. As part of the Consent Order, we agreed to make a payment of \$200 million and to implement certain new procedures and enhance certain existing procedures in the United States. We also agreed to be subject to certain audits by an independent compliance auditor, or the ICA, for a period of seven years; requirements regarding compliance certification and record creation and maintenance; and a prohibition on misrepresentations and misleading claims regarding, among other things, income and lavish lifestyles. The FTC and ICA will also have the right to inspect Company records and request additional compliance reports for purposes of conducting audits pursuant to the Consent Order. In September 2016, we and the FTC mutually selected Affiliated Monitors, Inc. to serve as the ICA. The terms of the Consent Order are described in greater detail in our Current Report on Form 8-K filed on July 15, 2016.

The Consent Order includes a number of restrictions and requirements and therefore creates compliance risks, and while we believe we are fully compliant with the Consent Order, there is no guarantee that we are fully compliant or in the future will continue to be fully compliant with the Consent Order. We do not believe the Consent Order changes our business model as a direct selling company. However, compliance with the Consent Order required us to implement new and enhanced procedures regarding, among other things, tracking retail sales and internal consumption by distributors. We have instituted controls and procedures and developed technology solutions that we believe address these Consent Order requirements, including tools and software used by distributors to, among other things, document their sales and more efficiently track and manage their customer base. However, there can be no assurances that some or all of these controls and procedures and technology solutions will operate as expected. Any failure of these systems to operate as designed could cause us to fail to maintain the records required under, or otherwise violate terms of, the Consent Order. Compliance with the Consent Order will require the cooperation of Members and, while we have updated our training programs and policies to address the Consent Order and expect our Members to cooperate, we do not have the same level of influence or control over our Members as we could were they our own employees. Failure by our Members to comply with the relevant aspects of the Consent Order could be a violation of the Consent Order and impact our ability to comply. While we believe we are compliant with the Consent Order and our board of directors has established the Implementation Oversight Committee, a committee which meets regularly with management to oversee our compliance with the terms of the Consent Order, there can be no assurances that the FTC or ICA would agree now or will agree in the future. In the event we are found to be in violation of the Consent Order, the FTC could, among other things, take corrective actions such as initiating enforcement actions, seeking an injunction or other restrictive orders and imposing civil monetary penalties against us and our officers and directors.

The Consent Order may also impact our business operations, including our net sales and profitability. For example, the Consent Order imposes certain requirements regarding the verification and receipting of sales and there can be no assurances that these or other requirements of the Consent Order, our compliance therewith and the new and enhanced business procedures implemented as a result thereof, will not lead to reduced sales, whether as a result of undocumented sales activity or otherwise. The Consent Order also imposes restrictions on distributors' ability to open Nutrition Clubs in the United States. Additionally, the new and enhanced procedures described above, and any other actions taken in respect of compliance with the Consent Order, could be costly. These extensive costs or any amounts in excess of our cost estimates could have a material adverse effect on our financial condition and results of operations. Our Members may also disagree with our decision to enter into the Consent Order, whether because they disagree with certain terms thereof, they believe it will negatively impact their personal business or they would not have settled the investigation on any terms. The Consent Order also provides that if the total eligible U.S. sales on which compensation may be paid falls below 80% of the Company's total U.S. sales for a given year, compensation payable to distributors on eligible U.S. sales will be capped at 41.75% of the Net Rewardable Sales amount as defined in the Consent Order. While we believe we will achieve the required 80% threshold necessary to pay full distributor compensation, this result is subject to the review and audit of the FTC and ICA and they may not agree with our conclusions. Because our business is dependent on our Members, our business operations and net sales could be adversely affected if U.S. distributor compensation is restricted or if any meaningful number of Members are dissatisfied, choose to reduce activity levels or leave our business altogether. Member dissatisfaction may also negatively impact the willingness of new Members to join Herbalife as a distributor. Further, management and the board of directors may be required to focus a substantial amount of time on compliance activities, which could divert their attention from running and growing our business. We may also be required to suspend or defer many or all of our current or anticipated business development, capital deployment and other projects unrelated to compliance with the Consent Order to allow resources to be focused on our compliance efforts, which could cause us to fall short of our guidance or analyst or investor expectations. In addition, while we believe the Consent Order will set a new standard within the industry, our competitors are not required to comply with the Consent Order and may not be subject to similar actions, which could limit our ability to effectively compete for Members, customers and ultimately net sales.

The Consent Order also creates additional third-party risks. Although the Consent Order resolved the FTC's multi-year investigation into the Company, it does not prevent other third-parties from bringing actions against us, whether in the form of other state, federal or foreign regulatory investigations or proceedings, or private litigation, any of which could lead to, among other things, monetary settlements, fines, penalties or injunctions. Although we neither admitted nor denied the allegations in the FTC's complaint in agreeing to the terms of the Consent Order (except as to the Court having jurisdiction over the matter), third-parties may use specific statements or other matters addressed in the Consent Order as the basis for their action. The Consent Order or any subsequent legal or regulatory claim may also lead to negative publicity, whether because some view it as a condemnation of the Company or our direct selling business model or because other third parties use it as justification to make unfounded and baseless assertions against us, our business model or our Members. An increase in the number, severity or scope of third-party claims, actions or public assertions may result in substantial costs and harm to our reputation. The Consent Order may also impact third parties willingness to work with us as a company.

The impact of the Consent Order on our business, including the effectiveness of the controls, procedures and technology solutions implemented to comply therewith, and on our business and our member base, could be significant. If our business is adversely impacted, it is uncertain as to whether, or how quickly, we would be able to rebuild, irrespective of market conditions. Our financial condition and results of operations could be harmed if we are not able to comply with the Consent Order, if costs related to compliance exceed our estimates, if it has a negative impact on net sales, or if it leads to further legal, regulatory, or compliance claims, proceedings, or investigations or litigation.

A substantial portion of our business is conducted in foreign markets, exposing us to the risks of trade or foreign exchange restrictions, increased tariffs, foreign currency fluctuations, disruptions or conflicts with our third party importers and similar risks associated with foreign operations.

Approximately 80% of our net sales for the year ended December 31, 2016 were generated outside the United States, exposing our business to risks associated with foreign operations. For example, a foreign government may impose trade or foreign exchange restrictions or increased tariffs, or otherwise limit or restrict our ability to import products into a country, any of which could negatively impact our operations. We are also exposed to risks associated with foreign currency fluctuations. For instance, purchases from suppliers are generally made in U.S. dollars while sales to Members are generally made in local currencies. Accordingly, strengthening of the U.S. dollar versus a foreign currency could have a negative impact on us. Although we engage in transactions to protect against risks associated with foreign currency fluctuations, we cannot be certain any hedging activity will effectively reduce our exchange rate exposure. Additionally, we may be negatively impacted by conflicts with or disruptions caused or faced by our third party importers, as well as conflicts between such importers and local governments or regulating agencies. Our operations in some markets also may be adversely affected by political, economic and social instability in foreign countries. Our operations, both domestically and internationally, could also be affected by laws and regulations related to immigration. For example, current and future tightening of U.S. immigration controls may adversely affect the residence status of non-U.S. employees in our U.S. locations or our ability to hire new non-U.S. employees in such locations and may adversely affect the ability of non-U.S. Members from entering the U.S. As we continue to focus on expanding our existing international operations, these and other risks associated with international operations may increase, which could harm our financial condition and operating results.

Another risk associated with our international operations is the possibility that a foreign government may impose foreign currency remittance restrictions. Due to the possibility of government restrictions on transfers of cash out of the country and control of exchange rates, we may not be able to immediately repatriate cash at the official exchange rate. If this should occur, or if the official exchange rate devalues, it may have a material adverse effect on our business, assets, financial condition, liquidity, results of operations or cash flows. For example, currency restrictions enacted by the Venezuelan government continue to be restrictive and have impacted the ability of our subsidiary in Venezuela, or Herbalife Venezuela, to obtain U.S. dollars in exchange for Venezuelan Bolivars at the official foreign exchange rate. These currency restrictions and current pricing restrictions continue to limit Herbalife Venezuela's ability to import U.S. dollar denominated raw materials and finished goods which in addition to the Venezuelan Bolivar devaluations has significantly negatively impacted our Venezuelan operations. If we are unsuccessful in implementing any financially and economically viable strategies, including local manufacturing, we may be required to fundamentally change our business model or suspend or cease operations in Venezuela. Also, if the foreign currency and pricing or other restrictions in Venezuela intensify or do not improve and, as a result, impact our ability to control our Venezuelan operations, we may be required to deconsolidate Herbalife Venezuela for U.S. GAAP purposes and would be subject to the risk of further impairments.

Our business in China is subject to general, as well as industry-specific, economic, political and legal developments and risks in China and requires that we utilize a modified version of the business model we use elsewhere in the world.

Our expansion of operations into China and the continued success of our business in China is subject to risks and uncertainties related to general economic, political and legal developments in China, among other things. The Chinese government exercises significant control over the Chinese economy, including but not limited to controlling capital investments, allocating resources, setting monetary policy, controlling foreign exchange and monitoring foreign exchange rates, implementing and overseeing tax regulations, providing preferential treatment to certain industry segments or companies and issuing necessary licenses to conduct business. In addition, we could face additional risks resulting from changes in China's data privacy and cybersecurity requirements. Accordingly, any adverse change in the Chinese economy, the Chinese legal system or Chinese governmental, economic or other policies could have a material adverse effect on our business in China and our prospects generally.

China has published regulations governing direct selling and prohibiting pyramid promotional schemes, and a number of administrative methods and proclamations have been issued. These regulations require us to use a modified version of the business model we use in other markets. To allow us to operate under these regulations, we have created and introduced a model specifically for China based on our understanding as to how regulators are interpreting and enforcing these regulations, our interpretation of applicable regulations and our understanding of the practices of other international direct selling companies in China.

In China, we have sales representatives who are permitted by the terms of our direct selling licenses to sell away from fixed retail locations in the provinces of Jiangsu, Guangdong, Shandong, Zhejiang, Guizhou, Beijing, Fujian, Sichuan, Hubei, Shanxi, Shanghai, Jiangxi, Liaoning, Jilin, Henan, Chongqing, Hebei, Shaanxi, Tianjin, Heilongjiang, Hunan, Guangxi, Hainan, Anhui, Yunnan, Gansu, Ningxia, and Inner Mongolia. In Xinjiang province where the Company does not have a direct selling license, it has a Company-operated retail store that can directly serve customers and preferred customers. With online orderings throughout China, there has been a declining demand in Company-operated retail stores.

We also engage independent service providers who meet both the requirements to operate their own business under Chinese law as well as the conditions set forth by Herbalife to sell products and provide marketing, sales support and other services to Herbalife customers. In China, our independent service providers are compensated for marketing, sales support, and other services instead of the distributor allowances and royalty overrides utilized in our global marketing plan. The service hours and related fees eligible to be earned by and then paid to independent service providers are based on a number of factors including the sales generated by them and by others to whom they may provide marketing, sales support and other services, the quality of their service and other factors as well as any potential future sales generated from the recently announced and expanded online ordering platform. Total compensation available to our independent service providers in China can generally be comparable to the total compensation available to other sales leaders globally.

These business model features in China are not common to the business model we employ elsewhere in the world, and based on the direct selling licenses we have received and the terms of those which we hope to receive in the future to conduct a direct selling enterprise in China, our business model in China will continue to incorporate some or all of these features. The direct selling regulations require us to apply for various approvals to conduct a direct selling enterprise in China. The process for obtaining the necessary licenses to conduct a direct selling business is protracted and cumbersome and involves multiple layers of Chinese governmental authorities and numerous governmental employees at each layer. While direct selling licenses are centrally issued, such licenses are generally valid only in the jurisdictions within which related approvals have been obtained. Such approvals are generally awarded on local and provincial bases, and the approval process requires involvement with multiple ministries at each level. Our participation and conduct during the approval process is guided not only by distinct Chinese practices and customs, but is also subject to applicable laws of China and the other jurisdictions in which we operate our business, including the U.S., as well as our internal code of ethics. There is always a risk that in attempting to comply with local customs and practices in China during the application process or otherwise, we will fail to comply with requirements applicable to us in China itself or in other jurisdictions, and any such failure to comply with applicable requirements could prevent us from obtaining the direct selling licenses or related local or provincial approvals. Furthermore, we rely on certain key personnel in China to assist us during the approval process, and the loss of any such key personnel could delay or hinder our ability to obtain licenses or related approvals. For all of the above reasons, there can be no assurance that we will obtain additional direct selling licenses, or obtain related approvals to expand into any or all of the localities or provinces in China that are important to our business. Our inability to obtain, retain, or renew any or all of the licenses or related approvals that are required for us to operate in China could negatively impact our business.

Additionally, although certain regulations have been published with respect to obtaining and operating under such approvals and otherwise conducting business in China, other regulations are pending and there continues to be uncertainty regarding the interpretation and enforcement of Chinese regulations. The regulatory environment in China is evolving, and officials in the Chinese government, including at the local and central level, exercise broad discretion in deciding how to interpret, apply, and enforce regulations as they deem appropriate, including to promote social order. Regulators in China may change how they interpret and enforce the direct selling regulations, both current interpretations and enforcement thereof or future iterations. Regulators in China may also modify the regulations. We cannot be certain that our business model will continue to be deemed by national or local Chinese regulatory authorities to be compliant with any such regulations. The Chinese government rigorously monitors the direct selling market in China, and in the past has taken serious action against companies that the government believed were engaging in activities they regarded to be in violation of applicable law, including shutting down their businesses and imposing substantial fines. As a result, there can be no guarantee that the Chinese government's current or future interpretation and application of the existing and new regulations will not negatively impact our business in China, result in regulatory investigations or lead to fines or penalties against us or our Chinese Members. If our business practices are deemed to be in violation of applicable regulations as they are or may be interpreted or enforced, or modified regulations, in particular with respect to the factors used in determining the services a service provider is eligible to perform and service fees they are eligible to earn and to receive, then we could be sanctioned and/or required to change our business model, either of which could have a significant adverse impact on our business in China.

Chinese regulations prevent persons who are not Chinese nationals from engaging in direct selling in China. We cannot guarantee that any of our Members living outside of China or any of our sales representatives or independent service providers in China have not engaged or will not engage in activities that violate our policies in this market, or that violate Chinese law or other applicable law, and therefore result in regulatory action and adverse publicity.

China has also enacted labor contract and social insurance legislation. We have reviewed our employment contracts and contractual relations with employees in China, which include certain of our employed sales personnel, and have transferred those employed sales personnel to independent service providers and have made such other changes as we believe to be necessary or appropriate to bring these contracts and contractual relations into compliance with these laws and their implementing regulations. In addition, we continue to monitor the situation to determine how these laws and regulations will be implemented in practice. There is no guarantee that these laws will not adversely impact us, cause us to change our operating plan for China or otherwise have an adverse impact on our business operations in China.

We may continue to experience rapid growth in China, and there can be no assurances that we will be able to successfully manage expansion of manufacturing operations and a growing and dynamic sales force. If we are unable to effectively scale our supply chain and manufacturing infrastructure to support future growth in China, our operations in China may be adversely impacted.

If we fail to further penetrate existing markets, then the growth in sales of our products, along with our operating results, could be negatively impacted.

The success of our business is to a large extent contingent on our ability to further penetrate existing markets which is subject to numerous factors, many of which are out of our control. Government regulations in both our domestic and international markets can delay or prevent the introduction, or require the reformulation or withdrawal, of some of our products, which could negatively impact our business, financial condition and results of operations. Also, our ability to increase market penetration in certain countries may be limited by the finite number of persons in a given country inclined to pursue a direct selling business opportunity or consumers willing to purchase Herbalife products. Moreover, our growth will depend upon improved training and other activities that enhance Member retention in our markets. While we have recently experienced significant growth in certain of our markets, we cannot assure you that such growth levels will continue in the immediate or long term future. Furthermore, our efforts to support growth in such international markets could be hampered to the extent that our infrastructure in such markets is deficient when compared to our infrastructure in our more developed markets, such as the U.S. Therefore, we cannot assure you that our general efforts to increase our market penetration and Member retention in existing markets will be successful. If we are unable to further penetrate existing markets, our operating results could suffer.

Our contractual obligation to sell our products only through our Herbalife Member network and to refrain from changing certain aspects of our Marketing Plan may limit our growth.

We are a party to an agreement with our Members that provides assurances, to the extent legally permitted, we will not sell Herbalife products worldwide through any distribution channel other than our network of independent Herbalife Members. Thus, we are contractually prohibited from expanding our business by selling Herbalife products through other distribution channels that may be available to our competitors, such as over the Internet, through wholesale sales, by establishing retail stores or through mail order systems. Since this is an open-ended commitment, there can be no assurance that we will be able to take advantage of innovative new distribution channels that are developed in the future.

In addition, this agreement with our Members provides that we will not make any material changes adverse to our Members to certain aspects of our Marketing Plan without the approval described below. For example, our agreement with our Members provides that we may increase, but not decrease, the discount percentages available to our Members for the purchase of products or the applicable royalty override percentages, and production and other bonus percentages available to our Members at various qualification levels within our Member hierarchy. We may not modify the eligibility or qualification criteria for these discounts, royalty overrides and production and other bonuses unless we do so in a manner to make eligibility and/or qualification easier than under the applicable criteria in effect as of the date of the agreement. Our agreement with our Members further provides that we may not vary the criteria for qualification for each Member tier within our Member hierarchy, unless we do so in such a way so as to make qualification easier.

Although we reserved the right to make these changes to our Marketing Plan without the consent of our Members in the event that changes are required by applicable law or are necessary in our reasonable business judgment to account for specific local market or currency conditions to achieve a reasonable profit on operations, we may initiate other changes that are adverse to our Members based on an assessment of what will be best for the Company and its Members. Under the agreement with our Members, these other adverse changes would then be submitted to our Member leadership for a vote. The vote would require the approval of at least 51% of our Members then at the level of President's Team earning at the production bonus level of 6% who vote, provided that at least 50% of those Members entitled to vote do in fact vote. Therefore, while we believe that this agreement has strengthened our relationship with our existing Members, improved our ability to recruit new Members and generally increased the long-term stability of our business, there can be no assurance that our agreement with our Members will not restrict our ability to adapt our Marketing Plan to the evolving requirements of the markets in which we operate. As a result, our growth may be limited.

We depend on the integrity and reliability of our information technology infrastructure, and any related inadequacies may result in substantial interruptions to our business.

Our ability to provide products and services to our Members depends on the performance and availability of our core transactional systems. We upgraded our back office systems globally to the Oracle Enterprise Suite which is supported by a robust hardware and network infrastructure. The Oracle Enterprise Suite is a scalable and stable solution that provides a solid foundation upon which we are building our next generation Member facing Internet toolset. While we continue to invest in our information technology infrastructure, there can be no assurance that there will not be any significant interruptions to such systems or that the systems will be adequate to meet all of our future business needs.

The most important aspect of our information technology infrastructure is the system through which we record and track Member sales, Volume Points, royalty overrides, bonuses and other incentives. We have encountered, and may encounter in the future, errors in our software or our enterprise network, or inadequacies in the software and services supplied by our vendors, although to date none of these errors or inadequacies has had a meaningful adverse impact on our business. Any such errors or inadequacies that we may encounter in the future may result in substantial interruptions to our services and may damage our relationships with, or cause us to lose, our Members if the errors or inadequacies impair our ability to track sales and pay royalty overrides, bonuses and other incentives, which would harm our financial condition and operating results. Any such errors could create compliance risks under the Consent Order or any applicable laws or regulations. Such errors may be expensive or difficult to correct in a timely manner, and we may have little or no control over whether any inadequacies in software or services supplied to us by third parties are corrected, if at all.

Our ability to effectively manage our network of Members, and to ship products, and track royalty and bonus payments on a timely basis, depends significantly on our information systems. The failure of our information systems to operate effectively, or a breach in security of these systems, could adversely impact the promptness and accuracy of our product distribution and transaction processing. We could be required to make significant additional expenditures to remediate any such failure, problem or breach.

Anyone who is able to circumvent our security measures could misappropriate confidential or proprietary information, including that of third parties such as our Members, cause interruption in our operations, damage our computers or otherwise damage our reputation and business. We may need to expend significant resources to protect against security breaches or to address problems caused by such breaches. Any actual security breaches could damage our reputation and expose us to a risk of loss or litigation and possible liability under various laws and regulations. In addition, employee error or malfeasance or other errors in the storage, use or transmission of any such information could result in a disclosure to third parties. If this should occur we could incur significant expenses addressing such problems. Since we collect and store Member and vendor information, including credit card information, these risks are heightened.

In addition, the use and handling of this information is regulated by evolving and increasingly demanding laws and regulations. As such, we may be required to upgrade our current information technology infrastructure and systems and incur additional costs.

Since we rely on independent third parties for the manufacture and supply of certain of our products, if these third parties fail to reliably supply products to us at required levels of quality and which are manufactured in compliance with applicable laws, including the dietary supplement and OTC drug cGMPs, then our financial condition and operating results would be harmed.

A significant portion of our products are manufactured at third party contract manufacturers. We cannot assure you that our outside contract manufacturers will continue to reliably supply products to us at the levels of quality, or the quantities, we require, and in compliance with applicable laws, including under the FDA's cGMP regulations. Additionally, while we are not presently aware of any current liquidity issues with our suppliers, we cannot assure you that they will not experience financial hardship.

For the portion of our product supply that is self-manufactured, we believe we have significantly lowered the product supply risk, as the risk factors of financial health, liquidity, capacity expansion, reliability and product quality are all within our control. However, increases to the volume of products that we self-manufacture in our Winston Salem and Lake Forest facilities and in Nanjing and Suzhou for the support of China raise the concentration risk that a significant interruption of production at any of our facilities due to, for example, natural disasters including earthquakes, hurricanes and floods, technical issues or work stoppages could impede our ability to conduct business. While our business continuity programs contemplate and plan for such events, if we were to experience such an event resulting in the temporary, partial or complete shutdown of one of these manufacturing facilities, we could be required to transfer manufacturing to the surviving facility and/or third-party contract manufacturers if permissible. When permissible, converting or transferring manufacturing to a third-party contract manufacturer could be expensive, time-consuming, result in delays in our production or shipping, reduce our net sales, damage our relationship with Members and damage our reputation in the marketplace, any of which could harm our business, results of operations and financial condition.

Our product supply contracts generally have a three-year term. Except for force majeure events such as natural disasters and other acts of God, and non-performance by Herbalife, our manufacturers generally cannot unilaterally terminate these contracts. These contracts can generally be extended by us at the end of the relevant time period and we have exercised this right in the past. Globally, we have over 50 product suppliers, with Fine Foods (Italy) being a major supplier for meal replacements, protein powders and nutritional supplements. Additionally, we use contract manufacturers in India, Brazil, Korea, Japan, Taiwan, Germany and the Netherlands to support our global business. In the event any of our contract manufacturers were to become unable or unwilling to continue to provide us with products in required volumes and at suitable quality levels, we would be required to identify and obtain acceptable replacement manufacturing sources. There is no assurance that we would be able to obtain alternative manufacturing sources on a timely basis. An extended interruption in the supply of products would result in the loss of sales. In addition, any actual or perceived degradation of product quality as a result of reliance on contract manufacturers may have an adverse effect on sales or result in increased product returns and buybacks.

If we fail to protect our trademarks and tradenames, then our ability to compete could be negatively affected, which would harm our financial condition and operating results.

The market for our products depends to a significant extent upon the goodwill associated with our trademark and tradenames. We own, or have licenses to use, the material trademark and trade name rights used in connection with the packaging, marketing and distribution of our products in the markets where those products are sold. Therefore, trademark and trade name protection is important to our business. Although most of our trademarks are registered in the United States and in certain foreign countries in which we operate, we may not be successful in asserting trademark or trade name protection. In addition, the laws of certain foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. The loss or infringement of our trademarks or tradenames could impair the goodwill associated with our brands and harm our reputation, which would harm our financial condition and operating results.

Unlike in most of the other markets in which we operate, limited protection of intellectual property is available under Chinese law. Accordingly, we face an increased risk in China that unauthorized parties may attempt to copy or otherwise obtain or use our trademarks, copyrights, product formulations or other intellectual property. Further, because Chinese commercial law is relatively undeveloped, we may have limited legal recourse in the event we encounter significant difficulties with intellectual property theft or infringement. As a result, we cannot assure you that we will be able to adequately protect our product formulations or other intellectual property.

We permit the limited use of our trademarks by our Members to assist them in marketing our products. It is possible that doing so may increase the risk of unauthorized use or misuse of our trademarks in markets where their registration status differs from that asserted by our Members, or they may be used in association with claims or products in a manner not permitted under applicable laws and regulations. Were these to occur it is possible that this could diminish the value of these marks or otherwise impair our further use of these marks.

If our Members fail to comply with labeling laws, then our financial condition and operating results would be harmed.

Although the physical labeling of our products is not within the control of our Members, our Members must nevertheless advertise our products in compliance with the extensive regulations that exist in certain jurisdictions, such as the United States, which considers product advertising to be labeling for regulatory purposes.

Our products are sold principally as foods, dietary supplements and cosmetics and are subject to rigorous FDA and related legal regimens limiting the types of therapeutic claims that can be made for our products. The treatment or cure of disease, for example, is not a permitted claim for these products. While we train our Members and attempt to monitor our Members' marketing materials, we cannot ensure that all such materials comply with applicable regulations, including bans on therapeutic claims. If our Members fail to comply with these restrictions, then we and our Members could be subjected to claims, financial penalties, mandatory product recalls or relabeling requirements, which could harm our financial condition and operating results. Although we expect that our responsibility for the actions of our Members in such an instance would be dependent on a determination that we either controlled or condoned a noncompliant advertising practice, there can be no assurance that we could not be held vicariously liable for the actions of our Members.

If our intellectual property is not adequate to provide us with a competitive advantage or to prevent competitors from replicating our products, or if we infringe the intellectual property rights of others, then our financial condition and operating results would be harmed.

Our future success and ability to compete depend upon our ability to timely produce innovative products and product enhancements that motivate our Members and customers, which we attempt to protect under a combination of copyright, trademark and trade secret laws, confidentiality procedures and contractual provisions. However, our products are generally not patented domestically or abroad, and the legal protections afforded by common law and contractual proprietary rights in our products provide only limited protection and may be time-consuming and expensive to enforce and/or maintain. Further, despite our efforts, we may be unable to prevent third parties from infringing upon or misappropriating our proprietary rights or from independently developing non-infringing products that are competitive with, equivalent to and/or superior to our products.

Monitoring infringement and/or misappropriation of intellectual property can be difficult and expensive, and we may not be able to detect every infringement or misappropriation of our proprietary rights. Even if we do detect infringement or misappropriation of our proprietary rights, litigation to enforce these rights could cause us to divert financial and other resources away from our business operations. Further, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States.

Additionally, third parties may claim that products or marks that we have independently developed or which bear certain of our trademarks infringe upon their intellectual property rights and there can be no assurance that one or more of our products or marks will not be found to infringe upon third party intellectual property rights in the future.

Since one of our products constitutes a significant portion of our net sales, significant decreases in consumer demand for this product or our failure to produce a suitable replacement should we cease offering it would harm our financial condition and operating results.

For 2016, 2015 and 2014, our Formula 1 Healthy Meal, our best-selling product line, approximated 30% of our net sales. If consumer demand for this product decreases significantly or we cease offering this product without a suitable replacement, then our financial condition and operating results would be harmed.

If we lose the services of members of our senior management team, then our financial condition and operating results could be harmed.

We have depended, and will continue to depend, on the continued services of our senior management team as it works closely with the senior Member leadership to create an environment of inspiration, motivation and entrepreneurial business success. Effective June 1, 2017, Richard P. Goudis, our previous Chief Operating Officer, became the Chief Executive Officer of the Company and Michael O. Johnson, our previous Chairman and Chief Executive Officer, became Executive Chairman of the Company, consistent with a succession strategy plan previously approved by our board of directors. Any significant leadership change or senior management transition involves inherent risk and any failure to ensure a smooth transition could hinder our strategic planning, execution and future performance. While we strive to mitigate the negative impact associated with changes to our senior management team, there may be uncertainty among investors, employees, Members and others concerning our future direction and performance. Any disruption in our operations or uncertainty could have a material adverse effect on our business, financial condition or results of operations.

Additionally, although we have entered into employment agreements with certain members of our senior management team, and do not believe that any of them are planning to leave or retire in the near term, we cannot assure you that our senior managers will remain with us. The loss or departure of any member of our senior management team could adversely impact our Member relations and operating results. If any of these executives do not remain with us, our business could suffer. Also, the loss of key personnel, including our regional and country managers, could negatively impact our ability to implement our business strategy, and our continued success will also be dependent on our ability to retain existing, and attract additional, qualified personnel to meet our needs. We currently do not maintain “key person” life insurance with respect to our senior management team.

Our international operations are subject to the laws and regulations of the United States and many foreign countries, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other similar laws in a number of countries.

We are subject to a variety of laws regarding our international operations, including the U.S. Foreign Corrupt Practices Act, or the FCPA, the U.K. Bribery Act of 2010, or the UK Bribery Act, and regulations issued by U.S. Customs and Border Protection, U.S. Treasury Department’s Office of Foreign Assets Control, or OFAC, and various foreign governmental agencies. The FCPA, the UK Bribery Act and similar anti-bribery laws in other jurisdictions generally prohibit companies and their intermediaries from making improper payments for the purpose of obtaining or retaining business as well as requiring companies to maintain accurate books and records. In recent years there has been a substantial increase in anti-bribery law enforcement activity with more frequent and aggressive investigations and enforcement proceedings by both the Department of Justice and the SEC, increased enforcement activity by non-U.S. regulators and increases in criminal and civil proceedings brought against companies and individuals. Our policies mandate compliance with these anti-bribery laws, including the requirements to maintain accurate information and internal controls. We operate in many parts of the world that have experienced governmental corruption to some degree and in certain circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. Notwithstanding our compliance programs, which include annual training and certification requirements, there is no assurance that our internal control policies and procedures will protect us from acts committed by our employees or agents. Additionally, we cannot predict the nature, scope or effect of future regulatory requirements to which our international operations might be subject or the manner in which existing or new laws might be administered or interpreted. Alleged or actual violations of any such existing or future laws (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others) may result in criminal or civil sanctions, including contract cancellations or debarment, and loss of reputation, which could have a material adverse effect on our business, financial condition, and results of operations.

The United Kingdom’s vote to exit from the European Union could adversely impact us.

On June 23, 2016, in a referendum vote commonly referred to as “Brexit,” a majority of British voters voted to exit the European Union and, in March 2017, the British government delivered formal notice of the U.K.’s intention to leave the European Union. The British government is currently in negotiations with the European Union to determine the terms of the U.K.’s exit. A withdrawal could potentially disrupt the free movement of goods, services and people between the U.K. and the European Union, undermine bilateral cooperation in key geographic areas and significantly disrupt trade between the U.K. and the European Union or other nations as the U.K. pursues independent trade relations. In addition, Brexit could lead to legal uncertainty and potentially divergent national laws and regulations as the U.K. determines which European Union laws to replace or replicate. The effects of Brexit will depend on any agreements the U.K. makes to retain access to European Union or other markets either during a transitional period or more permanently. It is unclear what long-term economic, financial, trade and legal implications the withdrawal of the U.K. from the European Union would have and how such withdrawal would affect our business globally and in the region. In addition, Brexit may lead other European Union member countries to consider referendums regarding their European Union membership. Any of these events, along with any political, economic and regulatory changes that may occur, could cause political and economic uncertainty in Europe and internationally and harm our business and financial results.

The covenants in our existing indebtedness limit our discretion with respect to certain business matters, which could limit our ability to pursue certain strategic objectives and in turn harm our financial condition and operating results.

Our credit facility contains financial and operating covenants that restrict our and our subsidiaries’ ability to, among other things:

- pay dividends, redeem share capital or capital stock and make other restricted payments and investments;
- incur or guarantee additional debt;
- impose dividend or other distribution restrictions on our subsidiaries; and
- create liens on our and our subsidiaries’ assets.

In addition, our credit facility requires us to meet certain financial ratios and financial conditions. Our ability to comply with these covenants may be affected by events beyond our control, including prevailing economic, financial and industry conditions. Failure to comply with these covenants could result in a default causing all amounts to become due and payable under our credit facility, which is secured by substantially all of our domestic assets, against which the lenders thereunder could proceed to foreclose.

We may use from time to time a certain amount of cash in order to satisfy the obligations relating to our convertible notes. The maturity or conversion of any of our convertible notes may adversely affect our financial condition and operating results, which could adversely affect the amount or timing of future potential share repurchases or the payment of dividends to our shareholders.

In February 2014, we issued convertible senior notes due on August 15, 2019, or the Convertible Notes, in the aggregate principal amount of \$1.15 billion. At maturity, we will have to pay the holders of the Convertible Notes the full aggregate principal amount of the Convertible Notes then outstanding.

Holders of our Convertible Notes may convert their notes at their option under the following circumstances: (i) during any calendar quarter commencing after the calendar quarter ending March 31, 2014, if the last reported sale price of our common shares for at least 20 trading days (whether or not consecutive) in a period of 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter exceeds 130% of the conversion price for the Convertible Notes on each applicable trading day; (ii) during the five business-day period immediately after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of Convertible Notes for each trading day of that measurement period was less than 98% of the product of the last reported sale price of our common shares and the conversion rate for the Convertible Notes for each such day; or (iii) upon the occurrence of specified corporate events. On and after May 15, 2019, holders may convert their Convertible Notes at any time, regardless of the foregoing circumstances. The Convertible Notes are net-share settled. If one or more holders elect to convert their Convertible Notes when conversion is permitted, we could be required to make cash payments equal to the par amount of each Convertible Note, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes, because our Convertible Notes are net-share settled, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of our Convertible Notes as a current rather than long-term liability, which could result in a material reduction of our net working capital. The requirement to pay cash upon conversion of the Convertible Notes or any adverse accounting treatment of the Convertible Notes may adversely affect our financial condition and operating results, each of which could in turn adversely impact the amount or timing of future potential share repurchases or the payment of dividends to our shareholders.

The conversion of any of the Convertible Notes into common shares could have a dilutive effect that could cause our share price to go down.

The Convertible Notes, until May 15, 2019, are convertible into common shares only if specified conditions are met and thereafter convertible at any time, at the option of the holder. We have reserved common shares for issuance upon conversion of the Convertible Notes. Upon conversion, the principal amount is due in cash, and to the extent that the conversion value exceeds the principal amount, the difference is due in common shares. While we have entered into capped call transactions to effectively increase the conversion of the Convertible Notes and lessen the risk of dilution to shareholders upon conversion, if the market price of our common shares, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, the number of our common shares we receive upon exercise of the capped call transactions will be capped. In that case, there would be dilution in respect of our common shares, because the number of our common shares or amounts of cash that we would owe upon conversion of the Convertible Notes in excess of the principal amount of converted Convertible Notes would exceed the number of common shares that we would be entitled to receive upon exercise of the capped call transactions, which would cause a dilutive effect that could cause our share price to go down. If any or all of the Convertible Notes are converted into common shares, our existing shareholders will experience immediate dilution of voting rights and our common share price may decline. Furthermore, the perception that such dilution could occur may cause the market price of our common shares to decline.

The conversion rate for the Convertible Notes as of February 7, 2014, the date of issuance thereof, was 11.5908 common shares per \$1,000 principal amount or a conversion price of approximately \$86.28 per common share. Because the conversion rate of the Convertible Notes adjusts upward upon the occurrence of certain events, such as a dividend payment, our existing shareholders may experience more dilution if any or all of the Convertible Notes are converted into common shares after the adjusted conversion rates became effective.

If we do not comply with transfer pricing, customs duties, VAT, and similar regulations, then we may be subjected to additional taxes, duties, interest and penalties in material amounts, which could harm our financial condition and operating results.

As a multinational corporation, operating in many countries including the United States, we are subject to transfer pricing and other tax regulations designed to ensure that our intercompany transactions are consummated at prices that have not been manipulated to produce a desired tax result, that appropriate levels of income are reported as earned by our United States or local entities, and that we are taxed appropriately on such transactions. In addition, our operations are subject to regulations designed to ensure that appropriate levels of customs duties are assessed on the importation of our products. We are currently subject to pending or proposed audits that are at various levels of review, assessment or appeal in a number of jurisdictions involving transfer pricing issues, income taxes, customs duties, value added taxes, withholding taxes, sales and use and other taxes and related interest and penalties in material amounts. In some circumstances, additional taxes, interest and penalties have been assessed and we will be required to pay the assessments or post surety, in order to challenge the assessments.

The imposition of new taxes, even pass-through taxes such as VAT, could have an impact on our perceived product pricing and will likely require that we increase prices in certain jurisdictions and therefore could have a potential negative impact on our business and results of operations. We have reserved in the consolidated financial statements an amount that we believe represents the most likely outcome of the resolution of these disputes, but if we are incorrect in our assessment we may have to pay the full amount asserted which could potentially be material. Ultimate resolution of these matters may take several years, and the outcome is uncertain. If the United States Internal Revenue Service or the taxing authorities of any other jurisdiction were to successfully challenge our transfer pricing practices or our positions regarding the payment of income taxes, customs duties, value added taxes, withholding taxes, sales and use, and other taxes, we could become subject to higher taxes, we may determine it is necessary to raise prices in certain jurisdictions accordingly and our revenue and earnings and our results of operations could be adversely affected.

See Note 5, *Contingencies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for further information on contingencies relating to VAT and other related matters.

We could become a “controlled foreign corporation” for U.S. federal income tax purposes.

We believe that we are currently not a “controlled foreign corporation” for U.S. federal income tax purposes. However, this conclusion depends upon whether United States persons or entities who own 10% or more of the total combined voting power (10% shareholders”) own in the aggregate more than 50% of (i) the total combined voting power, or (ii) the total value of all our stock. In determining voting power, in addition to voting stock any special voting rights to appoint directors, whether by law, agreement or other arrangement, may also be taken into account. For purposes of applying the voting and value tests, certain constructive ownership rules apply, which attribute ownership among certain family members and certain entities and their owners. These rules may also attribute ownership of our stock to a person or entity that is entitled to acquire our stock pursuant to an option, such as the holders of our Convertible Notes. These constructive ownership rules are very complex and their application to specific circumstances is subject to uncertainty.

If we were to be or become a “controlled foreign corporation,” our 10% shareholders would be subject to special tax treatment. Any shareholders who contemplate owning 10% or more of our outstanding shares (taking into account the impact of any share repurchases we may undertake pursuant to share repurchase programs) are urged to consult with their tax advisors with respect to the special rules applicable to 10% shareholders of controlled foreign corporations.

Changes in tax laws, treaties or regulations, or their interpretation could adversely affect us.

A change in applicable tax laws, treaties or regulations or their interpretation could result in a higher effective tax rate on our worldwide earnings and such change could be significant to our financial results. The Organisation for Economic Co-operation and Development has released guidance covering various international tax standards as part of its “base erosion and profit shifting” or “BEPS” initiative. The implementation of BEPS by jurisdictions in which we operate could result in changes to tax laws and regulations, including with respect to transfer pricing, that could materially increase our effective tax rate. Additionally, tax legislative proposals intending to eliminate some perceived tax advantages of companies that have legal domiciles outside the U.S. but have certain U.S. connections have repeatedly been introduced in the U.S. Congress. If these proposals are enacted, the result would increase our effective tax rate and could have a material adverse effect on the Company’s financial condition and results of operations.

We may be held responsible for certain taxes or assessments relating to the activities of our Members, which could harm our financial condition and operating results.

Our Members are subject to taxation, and in some instances, legislation or governmental agencies impose an obligation on us to collect taxes, such as value added taxes and social contributions, and to maintain appropriate records. In addition, we are subject to the risk in some jurisdictions of being responsible for social security, withholding or other taxes with respect to payments to our Members. In addition, in the event that local laws and regulations or the interpretation of local laws and regulations change to require us to treat our Members as employees, or that our Members are deemed by local regulatory authorities in one or more of the jurisdictions in which we operate to be our employees rather than independent contractors under existing laws and interpretations, we may be held responsible for social contributions, withholding and related taxes in those jurisdictions, plus any related assessments and penalties, which could harm our financial condition and operating results. See Note 5, *Contingencies*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q for a more specific discussion of contingencies related to the activities of our Members.

We may incur material product liability claims, which could increase our costs and harm our financial condition and operating results.

Our ingestible products include vitamins, minerals and botanicals and other ingredients and are classified as foods or dietary supplements and are not subject to pre-market regulatory approval in the United States. Our products could contain contaminated substances, and some of our products contain some ingredients that do not have long histories of human consumption. We rely upon published and unpublished safety information including clinical studies on ingredients used in our products and conduct limited clinical studies on some key products but not all products. Previously unknown adverse reactions resulting from human consumption of these ingredients could occur. As a marketer of dietary and nutritional supplements and other products that are ingested by consumers or applied to their bodies, we have been, and may again be, subjected to various product liability claims, including that the products contain contaminants, the products include inadequate instructions as to their uses, or the products include inadequate warnings concerning side effects and interactions with other substances. It is possible that widespread product liability claims could increase our costs, and adversely affect our revenues and operating income. Moreover, liability claims arising from a serious adverse event may increase our costs through higher insurance premiums and deductibles, and may make it more difficult to secure adequate insurance coverage in the future. In addition, our product liability insurance may fail to cover future product liability claims, thereby requiring us to pay substantial monetary damages and adversely affecting our business. Finally, given the higher level of self-insured retentions that we have accepted under our current product liability insurance policies, which are as high as approximately \$15 million, in certain cases we may be subject to the full amount of liability associated with any injuries, which could be substantial.

On February 6, 2004, the FDA banned the sale and use of dietary supplements containing botanical sources of ephedrine alkaloids. A number of jurisdictions have imposed similar bans or restrictions. Until late 2002, we had sold *Thermojetics*[®] original green herbal tablets, *Thermojetics*[®] green herbal tablets and *Thermojetics*[®] gold herbal tablets, all of which contained ephedrine alkaloids. Accordingly, we run the risk of product liability claims related to the ingestion of ephedrine alkaloids contained in those products. We have been in the past, and may be in the future, named as a defendant in product liability lawsuits seeking to link the ingestion of certain of the aforementioned products to subsequent alleged medical problems suffered by plaintiffs. There can be no assurance that we will prevail if we are named as a defendant in the future to product liability lawsuits related to the ingestion of ephedrine alkaloids contained in those products.

Holders of our common shares may face difficulties in protecting their interests because we are incorporated under Cayman Islands law.

Our corporate affairs are governed by our amended and restated memorandum and articles of association, by the Companies Law (2016 Revision), or the Companies Law, and the common law of the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as under statutes or judicial precedent in existence in jurisdictions in the United States. Therefore, shareholders may have more difficulty in protecting their interests in the face of actions by our management or board of directors than would shareholders of a corporation incorporated in a jurisdiction in the United States due to the comparatively less developed nature of Cayman Islands law in this area.

Shareholders of Cayman Islands exempted companies such as Herbalife have no general rights under Cayman Islands law to inspect corporate records and accounts or to obtain copies of lists of our shareholders. Our directors have discretion under our articles of association to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for you to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

A shareholder can bring a suit personally where its individual rights have been, or are about to be, infringed. Our Cayman Islands counsel, Maples and Calder, is not aware of any reported class action having been brought in a Cayman Islands court. Derivative actions have been brought in the Cayman Islands courts, and the Cayman Islands courts have confirmed the availability of such actions. In most cases, we would be the proper plaintiff where an action is brought to redress any loss or damage suffered by us, or based on a breach of duty owed to us, and a claim against, for example, our officers or directors usually may not be brought by a shareholder. However, based on English authorities, which would in all likelihood be of persuasive authority and be applied by a court in the Cayman Islands, exceptions to the foregoing principle may apply and a shareholder may be permitted to bring a claim derivatively on a company's behalf, where:

- a company is acting or proposing to act illegally or outside the scope of its corporate authority;
- the act complained of, although not acting outside the scope of its corporate authority, could be effected only if authorized by more than a simple majority vote; or
- those who control the company are perpetrating a “fraud on the minority”.

Provisions of our articles of association and Cayman Islands corporate law may impede a takeover or make it more difficult for shareholders to change the direction or management of the Company, which could reduce shareholders' opportunity to influence management of the Company.

Our articles of association permit our board of directors to issue preference shares from time to time, with such rights and preferences as they consider appropriate. Our board of directors could authorize the issuance of preference shares with terms and conditions and under circumstances that could have an effect of discouraging a takeover or other transaction.

In addition, our articles of association contain certain other provisions which could have an effect of discouraging a takeover or other transaction or preventing or making it more difficult for shareholders to change the direction or management of our Company, including the inability of shareholders to act by written consent, a limitation on the ability of shareholders to call special meetings of shareholders and advance notice provisions. As a result, our shareholders may have less input into the management of our Company than they might otherwise have if these provisions were not included in our articles of association.

The Cayman Islands have provisions under the Companies Law to facilitate mergers and consolidations between Cayman Islands companies and non-Cayman Islands companies. These provisions, contained within Part XVI of the Companies Law, are broadly similar to the merger provisions as provided for under Delaware Law.

There are however a number of important differences that could impede a takeover. First, the threshold for approval of the merger plan by shareholders is higher. The threshold is a special resolution of the shareholders (being 66 2/3% of those present in person or by proxy and voting) together with such other authorization, if any, as may be specified in the articles of association.

Additionally, the consent of each holder of a fixed or floating security interest (in essence a documented security interest as opposed to one arising by operation of law) is required to be obtained unless the Grand Court of the Cayman Islands waives such requirement.

The merger provisions contained within Part XVI of the Companies Law do contain shareholder appraisal rights similar to those provided for under Delaware law. Such rights are limited to a merger under Part XVI and do not apply to schemes of arrangement as discussed below.

The Companies Law also contains separate statutory provisions that provide for the merger, reconstruction and amalgamation of companies. These are commonly referred to in the Cayman Islands as “schemes of arrangement.”

The procedural and legal requirements necessary to consummate these transactions are more rigorous and take longer to complete than the procedures typically required to consummate a merger in the United States. Under Cayman Islands law and practice, a scheme of arrangement in relation to a solvent Cayman Islands company must be approved at a shareholders' meeting by a majority of each class of the company's shareholders who are present and voting (either in person or by proxy) at such meeting. The shares voted in favor of the scheme of arrangement must also represent at least 75% of the value of each relevant class of the company's shareholders present and voting at the meeting. The convening of these meetings and the terms of the amalgamation must also be sanctioned by the Grand Court of the Cayman Islands. Although there is no requirement to seek the consent of the creditors of the parties involved in the scheme of arrangement, the Grand Court typically seeks to ensure that the creditors have consented to the transfer of their liabilities to the surviving entity or that the scheme of arrangement does not otherwise materially adversely affect creditors' interests. Furthermore, the court will only approve a scheme of arrangement if it is satisfied that:

- the statutory provisions as to majority vote have been complied with;
- the shareholders who voted at the meeting in question fairly represent the relevant class of shareholders to which they belong;
- the scheme of arrangement is such as a businessman would reasonably approve; and
- the scheme of arrangement is not one that would more properly be sanctioned under some other provision of the Companies Law.

If the scheme of arrangement is approved, the dissenting shareholder would have no rights comparable to appraisal rights, which would otherwise ordinarily be available to dissenting shareholders of U.S. corporations, providing rights to receive payment in cash for the judicially determined value of the shares.

In addition, if an offer by a third party to purchase shares in us has been approved by the holders of at least 90% of our outstanding shares (not including such a third party) pursuant to an offer within a four-month period of making such an offer, the purchaser may, during the two months following expiration of the four-month period, require the holders of the remaining shares to transfer their shares on the same terms on which the purchaser acquired the first 90% of our outstanding shares. An objection can be made to the Grand Court of the Cayman Islands, but this is unlikely to succeed unless there is evidence of fraud, bad faith, collusion or inequitable treatment of the shareholders.

There is uncertainty as to shareholders' ability to enforce certain foreign civil liabilities in the Cayman Islands.

We are incorporated as an exempted company with limited liability under the laws of the Cayman Islands. A material portion of our assets are located outside of the United States. As a result, it may be difficult for our shareholders to enforce judgments against us or judgments obtained in U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States.

We have been advised by our Cayman Islands counsel, Maples and Calder, that although there is no statutory enforcement in the Cayman Islands of judgments obtained in the United States, the courts of the Cayman Islands will — based on the principle that a judgment by a competent foreign court imposes upon the judgment debtor an obligation to pay the sum for which judgment has been given — recognize and enforce a foreign judgment of a court of competent jurisdiction if such judgment is final, for a liquidated sum, not in respect of taxes or a fine or penalty, is not inconsistent with a Cayman Islands judgment in respect of the same matters, and was not obtained in a manner, and is not of a kind, the enforcement of which is contrary to natural justice or the public policy of the Cayman Islands. There is doubt, however, as to whether the Grand Court of the Cayman Islands will (1) recognize or enforce judgments of U.S. courts predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, or (2) in original actions brought in the Cayman Islands, impose liabilities predicated upon the civil liability provisions of the federal securities laws of the United States or any state of the United States, on the grounds that such provisions are penal in nature.

The Grand Court of the Cayman Islands may stay proceedings if concurrent proceedings are being brought elsewhere.

Our stock price may be adversely affected by third parties who raise allegations about our Company.

Short sellers and others who raise allegations regarding the legality of our business activities, some of whom are positioned to profit if our stock declines, can negatively affect our stock price. In late 2012, a hedge fund manager publicly raised allegations regarding the legality of our network marketing program and announced that his fund had taken a significant short position regarding our common shares, leading to intense public scrutiny and significant stock price volatility. Following this public announcement in December 2012, our stock price dropped significantly. This hedge fund manager continues to make allegations regarding the legality of our network marketing program, our product safety, our accounting practices and other matters. Additionally, from time to time the Company is subject to governmental and regulatory inquiries and inquiries from legislators that may adversely affect our stock price. Our stock price has continued to exhibit heightened volatility and the short interest in our common shares continues to remain high. Short sellers expect to make a profit if our common shares decline in value, and their actions and their public statements may cause further volatility in our share price. While a number of traders have publicly announced that they have taken long positions contrary to the hedge fund shorting our shares, the existence of such a significant short interest position and the related publicity may lead to continued volatility. The volatility of our stock may cause the value of a shareholder's investment to decline rapidly.

Item 2. *Unregistered Sales of Equity Securities and Use of Proceeds*

(a) None.

(b) None.

(c) On February 21, 2017, our board of directors authorized a new three-year \$1.5 billion share repurchase program that will expire on February 21, 2020, which replaced our prior share repurchase authorization which was set to expire on June 30, 2017 which, as of December 31, 2016, had \$232.9 million of remaining authorized capacity. This share repurchase program allows us, which includes a wholly owned subsidiary of Herbalife Ltd., to repurchase our common shares, at such times and prices as determined by our management as market conditions warrant, and to the extent Herbalife Ltd.'s distributable reserves are available under Cayman Islands law. The Credit Facility permits us to repurchase our common shares as long as no default or event of default exists and other conditions such as specified consolidated leverage ratios are met. As of June 30, 2017, the remaining authorized capacity under the Company's share repurchase program was approximately \$1,259.5 million. The following is a summary of our repurchases of common shares during the three months ended June 30, 2017, all of which were repurchased by our indirect wholly owned subsidiary. For further information on our share repurchases, see Note 10, *Shareholders' Equity*, to the Condensed Consolidated Financial Statements included in Part I, Item 1 of this Quarterly Report on Form 10-Q:

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs
April 1 — April 30	974,222	\$ 59.49	974,222	\$ 1,381,312,733
May 1 — May 31	412,208	\$ 71.28	412,208	\$ 1,351,931,209
June 1 — June 30	1,293,726	\$ 71.41	1,293,726	\$ 1,259,546,210
	<u>2,680,156</u>		<u>2,680,156</u>	

Item 3. *Defaults Upon Senior Securities*

None.

Item 4. *Mine Safety Disclosures*

Not applicable.

Item 5. *Other Information*

(a) None

(b) None.

Item 6. *Exhibits*

(a) Exhibit Index:

EXHIBIT INDEX

Exhibit Number	Description	Reference
3.1	Form of Amended and Restated Memorandum and Articles of Association of Herbalife Ltd.	(h)
4.1	Form of Share Certificate	(c)
4.2	Indenture between Herbalife Ltd. and Union Bank, N.A., as trustee, dated February 7, 2014, governing the 2.00% Convertible Senior Notes due 2019	(f)
4.3	Form of Global Note for 2.00% Convertible Senior Note due 2019 (included as Exhibit A to Exhibit 4.2 hereto)	(f)
10.1#	Herbalife International of America, Inc.'s Senior Executive Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.2#	Herbalife International of America, Inc.'s Management Deferred Compensation Plan, effective January 1, 1996, as amended	(a)
10.3#	Herbalife International Inc. 401K Profit Sharing Plan and Trust, as amended	(a)
10.4	Notice to Distributors regarding Amendment to Agreements of Distributorship, dated as of July 18, 2002 between Herbalife International, Inc. and each Herbalife Distributor	(a)
10.5#	Side Letter Agreement dated as of April 3, 2003 by and among WH Holdings (Cayman Islands) Ltd., Michael O. Johnson and the Shareholders listed therein	(a)
10.6	Form of Indemnification Agreement between Herbalife Ltd. and the directors and certain officers of Herbalife Ltd.	(b)
10.7#	Amended and Restated Herbalife Ltd. 2005 Stock Incentive Plan	(h)
10.8#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement	(k)
10.9#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement	(k)
10.10#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Michael O. Johnson.	(k)
10.11#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Richard P. Goudis.	(k)
10.12#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Michael O. Johnson.	*
10.13#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement applicable to Richard Goudis.	*
10.14#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Unit Award Agreement	*
10.15#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Stock Appreciation Right Award Agreement	*
10.16#	Herbalife Ltd. Employee Stock Purchase Plan	(d)
10.17#	Employment Agreement dated as of March 27, 2008 between Michael O. Johnson and Herbalife International of America, Inc.	(d)
10.18#	Stock Appreciation Right Award Agreement by and between Herbalife Ltd. and Michael O. Johnson, dated March 27, 2008	(d)
10.19#	Stock Appreciation Right Award Agreement by and between Herbalife Ltd. and Michael O. Johnson, dated March 27, 2008	(d)
10.20#	Amendment to Herbalife International Inc. 401K Profit Sharing Plan and Trust	(g)
10.21#	Form of Independent Directors Stock Appreciation Right Award Agreement	(h)

Exhibit Number	Description	Reference
10.22#	Herbalife Ltd. Amended and Restated Independent Directors Deferred Compensation and Stock Unit Plan	(h)
10.23#	Amended and Restated Employment Agreement by and between Richard P. Goudis and Herbalife International of America, Inc., dated as of January 1, 2010	(i)
10.24#	First Amendment to the Amended and Restated Employment Agreement by and between Richard P. Goudis and Herbalife International of America, Inc., dated as of December 28, 2010	(j)
10.25#	Amended and Restated Non-Management Directors Compensation Plan	(i)
10.26#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Non-Employee Directors Stock Appreciation Right Award Agreement	(i)
10.27#	Severance Agreement by and between John DeSimone and Herbalife International of America, Inc., dated as of February 23, 2011	(k)
10.28#	Amended and Restated Severance Agreement, dated as of February 23, 2011, by and between Desmond Walsh and Herbalife International of America, Inc.	(k)
10.29	Credit Agreement, dated as of March 9, 2011, by and among Herbalife International, Inc., Herbalife Ltd., Herbalife International Luxembourg S.a.R.L., certain subsidiaries of HII as guarantors, the lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer	(k)
10.30	First Amendment, dated July 26, 2012, to Credit Agreement, dated as of March 9, 2011, by and among Herbalife International, Inc., Herbalife Ltd., Herbalife International Luxembourg S.a.R.L., certain subsidiaries of HII as guarantors, the lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer	*
10.31#	Amendment to Amended and Restated Herbalife Ltd. 2005 Stock Incentive Plan	(k)
10.32	Second Amendment, dated February 3, 2014, to Credit Agreement, dated as of March 9, 2011, by and among Herbalife International, Inc., Herbalife Ltd., Herbalife International Luxembourg S.a.R.L., certain subsidiaries of HII as guarantors, the lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer	(e)
10.33	Form of Forward Share Repurchase Confirmation	(f)
10.34	Form of Base Capped Call Confirmation	(f)
10.35	Form of Additional Capped Call Confirmation	(f)
10.36#	Form of Herbalife Ltd. 2005 Stock Incentive Plan Performance Condition Stock Appreciation Right Award Agreement	(f)
10.37#	Amended and Restated Herbalife Ltd. 2014 Stock Incentive Plan	(k)
10.38	Confirmation between Merrill Lynch International and Herbalife Ltd., dated May 6, 2014	(g)
10.39	Third Amendment to Credit Agreement dated as of May 4, 2015, among Herbalife Ltd., Herbalife International, Inc., Herbalife International Luxembourg S.a.R.L., the guarantors part thereto, the lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer	(h)
10.40#	Herbalife Ltd. Executive Incentive Plan	(k)
10.41	Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment	(l)
10.42	Second Amended and Restated Support Agreement, dated July 15, 2016, by and among Herbalife Ltd., Carl C. Icahn, Icahn Partners Master Fund LP, Icahn Offshore LP, Icahn Partners LP, Icahn Onshore LP, Beckton Corp., Hopper Investments LLC, Barberry Corp., High River Limited Partnership, Icahn Capital LP, IPH GP LLC, Icahn Enterprises Holdings LP, and Icahn Enterprises GP Inc.	(l)
10.43#	Amended and Restated Employment Agreement by and between Richard P. Goudis and Herbalife International of America, Inc., dated as of November 1, 2016	(m)

Exhibit Number	Description	Reference
10.44#	Letter Agreement by and between Michael O. Johnson and Herbalife International of America, Inc., dated November 1, 2016	(m)
10.45#	Herbalife International of America, Inc. Executive Officer Severance Plan	(m)
10.46	Credit Agreement, dated as of February 15, 2017, by and among HLF Financing S.à r.l., HLF Financing US, LLC, Herbalife Ltd., Herbalife International Luxembourg S.à R.L., Herbalife International, Inc., the several banks and other financial institutions or entities from time to time party thereto, Credit Suisse AG, Cayman Islands Branch, as Term Administrative Agent and Collateral Agent, and Coöperatieve Rabobank U.A., New York Branch, as an Issuing Bank and the Revolver Administrative Agent	(m)
10.47#	Stock Appreciation Right Award Agreement (Performance-Vesting) by and between Herbalife Ltd. and Richard P. Goudis dated as of June 6, 2017	*
31.1	Rule 13a-14(a) Certification of Chief Executive Officer	*
31.2	Rule 13a-14(a) Certification of Chief Financial Officer	*
32.1	Section 1350 Certification of Chief Executive Officer and Chief Financial Officer	*
101.INS	XBRL Instance Document	*
101.SCH	XBRL Taxonomy Extension Schema Document	*
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	*
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document	*
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	*
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	*

* Filed herewith.

Management contract or compensatory plan or arrangement.

(a) Previously filed on October 1, 2004 as an Exhibit to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.

(b) Previously filed on December 2, 2004 as an Exhibit to Amendment No. 4 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.

(c) Previously filed on December 14, 2004 as an Exhibit to Amendment No. 5 to the Company's registration statement on Form S-1 (File No. 333-119485) and is incorporated herein by reference.

(d) Previously filed on April 29, 2013 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013 and is incorporated herein by reference.

(e) Previously filed on February 7, 2014 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.

(f) Previously filed on February 18, 2014 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2013 and is incorporated by reference.

(g) Previously filed on July 28, 2014 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014 and is incorporated herein by reference.

(h) Previously filed on May 5, 2015 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015 and is incorporated herein by reference.

(i) Previously filed on August 5, 2015 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 and is incorporated herein by reference.

(j) Previously filed on February 25, 2016 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2015 and is incorporated herein by reference.

(k) Previously filed on May 5, 2016 as an Exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016 and is incorporated herein by reference.

(l) Previously filed on July 15, 2016 as an Exhibit to the Company's Current Report on Form 8-K and is incorporated herein by reference.

(m) Previously filed on February 23, 2017 as an Exhibit to the Company's Annual Report on Form 10-K for the year ended December 31, 2016 and is incorporated herein by reference.

SIGNATURES

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

HERBALIFE LTD.

By: /s/ JOHN G. DESIMONE
John G. DeSimone
Chief Financial Officer

Dated: August 1, 2017

**HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN**

STOCK APPRECIATION RIGHT AWARD AGREEMENT

STOCK APPRECIATION RIGHT AGREEMENT (this "Agreement") dated as of _____, 2007 (the "Grant Date") between HERBALIFE LTD. (the "Company"), and Michael O. Johnson ("Participant").

WHEREAS, pursuant to the Herbalife Ltd. 2005 Stock Incentive Plan (the "Plan"), the Committee designated under the Plan (or an officer of the Company to who the authority to grant Awards has been delegated), desires to grant to Participant an award of stock appreciation rights; and

WHEREAS, Participant desires to accept such award subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and Participant, intending to be legally bound, hereby agree as follows:

1. Grant.

(a) The Company hereby grants to the Participant an Award of _____ Stock Appreciation Rights (the "Award") in accordance with Section 8 of the Plan and subject to the terms and conditions set forth herein and in the Plan (each as amended from time to time). Each Stock Appreciation Right represents the right to receive, upon exercise of the Stock Appreciation Right pursuant to this Agreement, from the Company, a payment, paid in Common Shares, par value \$.002 per share, of the Company (the "Common Shares"), equal to (i) the excess of the Fair Market Value, on the date of exercise, of one Common Share (as adjusted from time to time pursuant to Section 12 of the Plan) over the Base Price (as defined below) of the Stock Appreciation Right, divided by (ii) the Fair Market Value, on the date of exercise, of one Common Share, subject to terms and conditions set forth herein and in the Plan (each as amended from time to time).

(b) The "Base Price" for the Stock Appreciation Right shall be \$ per share (subject to adjustment as set forth in Section 12 of the Plan).

(c) Except as otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Plan.

2. Time for Exercise.

(a) The Award will become vested and exercisable in accordance with the following schedule: (i) 20% of the Stock Appreciation Rights will become vested and exercisable on the first anniversary of the Grant Date, (ii) 20% of the Stock Appreciation Rights will become vested and exercisable on the second anniversary of the Grant Date and (iii) the remaining 60% of the Stock Appreciation Rights subject to the Award will become vested and exercisable on the third anniversary of the Grant Date.

(b) Notwithstanding anything herein or in the Plan to the contrary, upon the occurrence of a Change of Control, the vesting of the Award shall be accelerated such that 50% of the then unvested portion of the Award shall become vested and exercisable as of the date of the Change of Control; and

(c) Notwithstanding anything herein or in the Plan to the contrary:

(i) in the event that, (x) within the 90-day period immediately preceding a Change in Control or (y) at any time following a Change of Control, Participant's employment with the Company and its Subsidiaries (or their respective successors) is terminated for any reason other than by reason of Participant's resignation without Good Reason or a termination for Cause, the Award shall become immediately and fully vested and exercisable as of immediately prior to such termination of employment;

(ii) in the event of Participant's death or disability (as such term is defined in Section 22(e) of the Code), the Award shall become immediately and fully vested and exercisable.

(d) In addition to the foregoing, subject to Paragraph 6 below, in the event of a Change of Control, the Committee as constituted immediately before such Change of Control may, in its sole discretion, accelerate the vesting and exercisability of this Award upon such Change of Control or take such other actions as provided in Section 13 of the Plan.

3. Expiration. The Award shall expire on the tenth (10th) anniversary of the date hereof; provided, however, that the Award may earlier terminate as provided in this Paragraph 3 and/or in Section 13 of the Plan.

(a) Upon termination of Participant's employment with the Company for any reason, that portion of the Award that is not vested and exercisable (after giving effect to any acceleration of vesting pursuant to this Agreement or otherwise) will terminate on the date of such termination of employment.

(b) Upon termination of Participant's employment with the Company, that portion of the Award that is vested and exercisable will terminate in accordance with the following:

(i) if Participant's employment with the Company is terminated for Cause, the vested and exercisable portion of the Award will terminate on the date of such termination;

(ii) if Participant's employment with the Company is terminated by reason of Participant's death or disability (as such term is defined in Section 22(e) of the Code), the vested and exercisable portion of the Award will terminate on the date that is one hundred eighty (180) days immediately following the date of such termination;

(iii) if Participant's employment with the Company is terminated by the Company without Cause or by reason of Participant's resignation for Good Reason, the vested and exercisable portion of the Award will terminate on the date that is the earlier of (A) six months following the expiration of any lock-up agreement to which Participant is subject with respect to the Common Shares subject to this Award and (B) the second anniversary of such termination, but in no event earlier than the expiration of the Standard Exercise Period (as defined below);

(iv) if Participant's employment with the Company is terminated by reason of Participant's resignation without Good Reason, the vested and exercisable portion of the Award will terminate upon the expiration of the Standard Exercise Period (as defined below).

(c) For purposes of this Agreement, the term "Cause" shall have the meaning ascribed to such term in any written employment agreement between Participant and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time.

(d) For purposes of this Agreement, the term "Good Reason" shall have the meaning ascribed to such term in any written employment agreement between Participant and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time.

(e) For purposes of this Agreement, the term "Standard Exercise Period" shall mean the 30-day period immediately following the termination of Participant's employment with the Company for any reason; provided that, if at the time of such termination the Company is in a "trading black-out" or "quiet period" or subject to a lock-up period other than in connection with its initial public offering, or Participant is otherwise prohibited from selling the Common Shares subject to the Award due to material non-public information or applicable regulation, then the Standard Exercise Period shall be then period that expires thirty (30) days immediately following the expiration of any such restriction.

(f) Notwithstanding anything herein or in the Plan to the contrary, for purposes of this Paragraph 3, if Participant continues to provide services to the Company or any of its Subsidiaries as a director or consultant after the termination of Participant's full-time employment with the Company, Participant shall not be deemed to have terminated employment with the Company until the termination of Participant's service to the Company and its Subsidiaries in all capacities.

4. Method of Exercise. The Award may be exercised by delivery to the Company (attention: Secretary) of a notice of exercise in the form specified by the Company specifying the number of shares with respect to which the Award is being exercised.

5. Fractional Shares. No fractional shares may be purchased upon any exercise.

6. Adjustments of Shares and Awards.

(a) Subject to Section 12(a) of the Plan, in the event of any change in the outstanding Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Common Shares or other corporate exchange, Change of Control or similar event, the Committee shall adjust appropriately the number or kind of shares or securities subject to the Award and Base Prices related thereto and make such other revisions to the Award as it deems are equitably required.

(b) Notwithstanding anything in the Plan to the contrary, with respect to any merger or consolidation of the Company into another corporation, the sale or exchange of all or substantially all of the assets of the Company, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other similar fundamental transaction involving the Company or any of its Subsidiaries (any of the foregoing, a "Qualifying Event"), the Committee shall provide either: (i) that the Award cannot be exercised after such Qualifying Event, provided that the Award shall be immediately and fully vested immediately prior to the consummation of any such Qualifying Event, and provided further that nothing in this Paragraph 6(b) shall prohibit Participant from exercising any then exercisable portion of the Award (including any portion thereof which will become exercisable by virtue of such Qualifying Event) prior to, or simultaneously with, the occurrence of such Qualifying Event and that, upon the occurrence of such Qualifying Event, the Award will terminate and be of no further force or effect and no longer be outstanding; (ii) that the Award will remain outstanding after such Qualifying Event, and from and after the consummation of such Qualifying Event, the Award will be exercisable for the kind and amount of securities and/or other property receivable as a result of such Qualifying Event by the holder of a number of Common Shares for which the Award could have been exercised immediately prior to such Qualifying Event; or (iii) the Award (including both the exercisable and unexercisable portions thereof) will be cancelled in its entirety and repurchased by the Company at a specific price equal to the excess, if any, of the Fair Market Value of the relevant underlying Common Shares less the applicable Base Price and that, upon the occurrence of such Qualifying Event, the Award will terminate and be of no further force or effect and no longer be outstanding. In the event of any conflict or inconsistency between the terms and conditions of this Paragraph 6(b) and the terms and conditions of Sections 12(b) and/or 13 of the Plan, the terms and condition of this Paragraph 6(b) shall control. The Committee's election pursuant to this Paragraph 6(b) will be applied in the same manner to all other holders of the Company's stock options and stock appreciation rights whose award agreements contain a similar provision. The Committee may only elect the alternatives specified in clauses (i) or (iii) of the first sentence of this Paragraph 6(b) in connection with any Qualifying Event described in clauses (iii)(A) or (iii)(C) of the definition of "Change of Control" (as such term is defined in the Plan).

7. Compliance With Legal Requirements.

(a) The Award shall not be exercisable and no Common Shares shall be issued or transferred pursuant to this Agreement or the Plan unless and until the Tax Withholding Obligation (as defined below), and all legal requirements applicable to such issuance or transfer have, in the opinion of counsel to the Company, been satisfied. Such legal requirements may include, but are not limited to, (i) registering or qualifying such Common Shares under any state or federal law or under the rules of any stock exchange or trading system, (ii) satisfying any applicable law or rule relating to the transfer of unregistered securities or demonstrating the availability of an exemption from applicable laws, (iii) placing a restricted legend on the Common Shares issued pursuant to the exercise of the Award, or (iv) obtaining the consent or approval of any governmental regulatory body.

(b) Participant understands that the Company is under no obligation to register for resale the Common Shares issued upon exercise of the Award. The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any exercise of the Award and/or any resales by Participant or other subsequent transfers by Participant of any Common Shares issued as a result of the exercise of the Award, including without limitation (i) restrictions under an insider trading policy, (ii) restrictions that may be necessary in the absence of an effective registration statement under the Securities Act of 1933, as amended, covering the Award and/or the Common Shares underlying the Award and (iii) restrictions as to the use of a specified brokerage firm or other agent for exercising the Award and/or for such resales or other transfers. The sale of the shares underlying the Award must also comply with other applicable laws and regulations governing the sale of such shares.

8. Shareholder Rights. Participant shall not be deemed a shareholder of the Company with respect to any of the Common Shares subject to the Award, except to the extent that such shares shall have been purchased and transferred to Participant.

9. Withholding Taxes.

(a) Participant is liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company takes with respect to any tax withholding obligations that arise in connection with the Award. The Company does not make any representation or undertaking regarding the treatment of any tax withholding in connection with the grant, vesting or settlement of the Award or the subsequent sale of Common Shares issuable pursuant to the Award. The Company does not commit and is under no obligation to structure the Award to reduce or eliminate Participant's tax liability.

(b) Prior to any event in connection with the Award (e.g., vesting or payment in respect of the Award) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the "Tax Withholding Obligation"), Participant is required to arrange for the satisfaction of the amount of such Tax Withholding Obligation in a manner acceptable to the Company.

(c) Unless the Committee provides otherwise, at any time not less than five (5) business days before any Tax Withholding Obligation arises (e.g., at the time the Award is exercised, in whole or in part), Participant shall notify the Company of Participant's election to pay Participant's Tax Withholding Obligation by wire transfer, cashier's check or other means permitted by the Company. In such case, Participant shall satisfy his or her tax withholding obligation by paying to the Company on such date as it shall specify an amount that the Company determines is sufficient to satisfy the expected Tax Withholding Obligation by (i) wire transfer to such account as the Company may direct, (ii) delivery of a cashier's check payable to the Company, Attn: General Counsel, at the Company's principal executive offices, or such other address as the Company may from time to time direct, or (iii) such other means as the Company may establish or permit. Participant agrees and acknowledges that prior to the date the Tax Withholding Obligation arises, the Company will be required to estimate the amount of the Tax Withholding Obligation and accordingly may require the amount paid to the Company under this Paragraph 9(c) to be more than the minimum amount that may actually be due and that, if Participant has not delivered payment of a sufficient amount to the Company to satisfy the Tax Withholding Obligation (regardless of whether as a result of the Company underestimating the required payment or Participant failing to timely make the required payment), the additional Tax Withholding Obligation amounts shall be satisfied such other means as the Committee deems appropriate.

10. Assignment or Transfer Prohibited. The Award may not be assigned or transferred otherwise than by will or by the laws of descent and distribution, and may be exercised during the life of Participant only by Participant or Participant's guardian or legal representative. Neither the Award nor any right hereunder shall be subject to attachment, execution or other similar process. In the event of any attempt by Participant to alienate, assign, pledge, hypothecate or otherwise dispose of the Award or any right hereunder, except as provided for herein, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Award by notice to Participant, and the Award shall thereupon become null and void.

11. Committee Authority. Any question concerning the interpretation of this Agreement or the Plan, any adjustments required to be made under this Agreement or the Plan, and any controversy that may arise under this Agreement or the Plan shall be determined by the Committee in its sole and absolute discretion. All decisions by the Committee shall be final and binding.

12. Application of the Plan. The terms of this Agreement are governed by the terms of the Plan, as it exists on the date of hereof and as the Plan is amended from time to time. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the terms of the Plan shall control, except as expressly stated otherwise herein. As used herein, the term "Section" generally refers to provisions within the Plan, and the term "Paragraph" refers to provisions of this Agreement.

13. No Right to Continued Employment. Nothing in the Plan, in this Agreement or any other instrument executed pursuant thereto or hereto shall confer upon Participant any right to continued employment with the Company or any of its subsidiaries or affiliates.

14. Further Assurances. Each party hereto shall cooperate with each other party, shall do and perform or cause to be done and performed all further acts and things, and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan.

15. Entire Agreement. This Agreement and the Plan together set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior oral and written and all contemporaneous or subsequent oral discussions, agreements and understandings of any kind or nature.

16. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and Participant and Participant's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HERBALIFE LTD.

By: _____

[Participant]

Name: _____

Title: _____

HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN
STOCK UNIT AWARD AGREEMENT

This Stock Unit Award Agreement (this "Agreement") is dated as of this day of , 2007 (the "Grant Date"), and is between Herbalife Ltd. (the "Company") and ("Participant").

WHEREAS, the Company, by action of the Board and approval of its shareholders established the Herbalife Ltd. 2005 Stock Incentive Plan (the "Plan");

WHEREAS, Participant is employed by the Company or one or more of its Subsidiaries and the Company desires to encourage Participant to own Common Shares for the purposes stated in Section 1 of the Plan;

WHEREAS, Participant and the Company have entered into this Agreement to govern the terms of the Stock Unit Award (as defined below) granted to Participant by the Company.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Grant.

(a) The Company hereby grants to Participant an Award of Stock Units (the "Award") in accordance with Section 9 of the Plan and subject to the conditions set forth in this Agreement and the Plan (as amended from time to time). Each Stock Unit represents the right to receive one Common Share (as adjusted from time to time pursuant to Section 12 of the Plan) subject to the fulfillment of the vesting and other conditions set forth in this Agreement. By accepting the Award, Participant irrevocably agrees on behalf of Participant and Participant's successors and permitted assigns to all of the terms and conditions of the Award as set forth in or pursuant to this Agreement and the Plan (as such Plan may be amended from time to time).

(b) Except as otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Plan.

2. Vesting.

(a) Participant's Stock Units and rights in and to the Common Shares subject to the Stock Units shall not be vested as of the Grant Date and shall be forfeitable unless and until otherwise vested pursuant to the terms of this Agreement. Subject to Participant's continued employment with the Company and/or its subsidiaries or affiliates the Award (or as otherwise provided in Paragraph 5) shall become vested in accordance with the following schedule: (i) one-third of the Stock Units subject to the Award shall vest on the date that is thirteen (13) months following the Grant Date, (ii) one-third of the Stock Units subject to the Award shall vest on the second anniversary of the Grant Date, and (iii) the remaining one-third of the Stock Units subject to the Award shall vest on third anniversary of the Grant Date (each such date a "Vesting Date"). Stock Units that have vested and are no longer subject to forfeiture are referred to herein as "Vested Units." Stock Units that are not vested and remain subject to forfeiture are referred to herein as "Unvested Units."

(b) Notwithstanding anything herein or in the Plan to the contrary, upon the occurrence of a Change of Control, the vesting of the Award shall be accelerated such that 50% of the then Unvested Units shall become Vested Units as of immediately prior to the consummation of the Change of Control; and

(c) Notwithstanding anything herein or in the Plan to the contrary:

(i) in the event that, (x) within the 90-day period immediately preceding a Change of Control or (y) at any time following a Change of Control, Participant's employment with the Company and its Subsidiaries (or their respective successors) is terminated for any reason other than by reason of Participant's resignation without Good Reason or a termination for Cause, all Unvested Units shall vest as of the date of such termination of employment;

(ii) except as set forth in Paragraph 2(c)(i), in the event that (A) Participant's employment with the Company and its Subsidiaries (or their respective successors) is terminated for any reason other than by reason of

Participant's resignation for any reason or a termination by the Company for Cause and (B) at the time of such termination of employment, Michael O. Johnson is no longer serving as the Chief Executive Officer of the Company, the vesting of the Award shall be accelerated such that 50% of the then Unvested Units shall become Vested Units as of immediately prior to such termination of employment; and

(iii) in the event that Participant's employment with the Company is terminated by reason of Participant's death or disability (as such term is defined in Section 22(e) of the Code), all Unvested Units shall vest as of the date of such termination of employment.

(d) In addition to the foregoing, subject to Paragraph 7 below, in the event of a Change of Control, the Committee as constituted immediately before such Change of Control may, in its sole discretion, accelerate the vesting of this Award upon such Change of Control or take such other actions as provided in Section 13 of the Plan.

(e) For purposes of this Agreement, the term "Cause" shall have the meaning ascribed to such term in any written employment agreement between Participant and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time.

(f) For purposes of this Agreement, the term "Good Reason" shall have the meaning ascribed to such term in any written employment agreement between Participant and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time.

3. Settlement of Stock Units.

(a) Subject to any deferral pursuant to Paragraph 3(b), each Vested Unit will be settled by the delivery of one Common Share (subject to adjustment under Section 12 of the Plan) to Participant or, in the event of Participant's death, to Participant's estate, heir or beneficiary, following the applicable Vesting Date; provided that the Participant has satisfied all of the tax withholding obligations described in Paragraph 8, and that Participant has completed, signed and returned any documents and taken any additional action that the Company deems appropriate to enable it to accomplish the delivery of the Common Shares.

(b) Subject to the satisfaction all of the tax withholding obligations described in Paragraph 8, Participant may elect to defer the receipt of any Common Shares issuable pursuant to Vested Units by submitting to the Company an election to defer receipt in the forms attached hereto as Exhibit A. In the event Participant intends to defer the receipt of any Common Shares, Participant must submit to the Company a deferral election form within thirty (30) days following the Grant Date. Participant hereby represents that Participant understands the effect of any such deferral under relevant federal, state and local tax laws.

(c) The date upon which Common Shares are to be issued under either Paragraph 3(a) or 3(b) above is referred to as the "Settlement Date." The issuance of the Common Shares hereunder may be effected by the issuance of a stock certificate, recording shares on the stock records of the Company or by crediting shares in an account established on Participant's behalf with a brokerage firm or other custodian, in each case as determined by the Company. Fractional shares will not be issued pursuant to the Award.

(d) Notwithstanding the above, (i) for administrative or other reasons, the Company may from time to time temporarily suspend the issuance of Common Shares in respect of Vested Units, (ii) the Company shall not be obligated to deliver any shares of the Common Stock during any period when the Company determines that the delivery of shares hereunder would violate any federal, state or other applicable laws, (iii) the Company may issue Common Shares hereunder subject to any restrictive legends that, as determined by the Company's counsel, are necessary to comply with securities or other regulatory requirements and (iv) the date on which shares are issued hereunder may include a delay in order to provide the Company such time as it determines appropriate to address tax withholding and other administrative matters.

4. Shareholder Rights. Prior to any issuance of Common Shares in settlement of the Award, no Common Shares will be reserved or earmarked for Participant or Participant's account nor shall Participant have any of the rights of a stockholder with respect to such Common Shares. Except as set forth in Paragraph 5, the Participant will not be entitled to any privileges of ownership of the Common Shares (including, without limitation, any voting rights) underlying Vested Units and/or Unvested Units unless and until Common Shares are actually delivered to Participant hereunder.

5. Dividend Equivalent Rights. From and after the Grant Date and unless and until the Award is forfeited or otherwise transferred back to the Company, Participant will be credited with additional Stock Units having a value equal to dividends declared by the Company, if any, with record dates that occur prior to the settlement of the Award as if the Common Shares underlying the Award had been issued and outstanding, based on the Fair Market Value of a Common Share on the applicable dividend payment date. Any such additional Stock Units shall be considered part of the Award and shall also be credited with additional Stock Units as dividends, if any, are declared, and shall be subject to the same restrictions and conditions as the Stock Units subject to the Award with respect to which they were credited (including, but not limited to, the forfeiture provisions set forth in Paragraph 6). Notwithstanding the foregoing, no such additional Stock Units will be credited with respect to any dividend declared by the Company in connection with which the Award is adjusted pursuant to Section 12 of the Plan.

6. Effect of Termination of Employment. Except as provided in this Paragraph 6 or the Plan, upon a termination of Participant's employment with the Company for any reason, the Unvested Units shall be forfeited by Participant and cancelled and surrendered to the Company without payment of any consideration to Participant. Notwithstanding anything herein to the contrary, upon and following a termination of Participant's employment with the Company by reason of Participant's Retirement (as defined below), the Award shall continue to vest in accordance with the terms of Paragraph 2 and be settled in accordance with Paragraph 3, in each case, as if Participant remained employed by the Company for a period of three years following such Retirement, at which time any then Unvested Units shall be forfeited by Participant and cancelled and surrendered to the Company without payment of any consideration to Participant. For purposes of this Agreement, the term "Retirement" shall mean termination of Participant's employment with the Company and its Subsidiaries if the sum of Participant's age and years of continuous service with the Company and its Subsidiaries is then equal to at least 75.

7. Adjustments of Common Shares and Awards.

(a) Subject to Section 12(a) of the Plan, in the event of any change in the outstanding Common Shares by reason of an acquisition, spin-off or reclassification, recapitalization or merger, combination or exchange of Common Shares or other corporate exchange, Change of Control or similar event, the Committee shall adjust appropriately the number or kind of shares or securities subject to the Award and make such other revisions to the Award as it deems are equitably required.

(b) Notwithstanding anything in the Plan to the contrary, with respect to any merger or consolidation of the Company into another corporation, the sale or exchange of all or substantially all of the assets of the Company, a Change of Control or the recapitalization, reclassification, liquidation or dissolution of the Company or any other similar fundamental transaction involving the Company or any of its Subsidiaries (any of the foregoing, a "Qualifying Event"), the Committee shall provide either: (i) that the Award will terminate upon such Qualifying Event, provided that the Award shall be immediately and fully vested immediately prior to the consummation of any such Qualifying Event, and provided further that upon the occurrence of such Qualifying Event, the Award will terminate and be of no further force or effect and no longer be outstanding; (ii) that the Award will remain outstanding after such Qualifying Event, and from and after the consummation of such Qualifying Event, the Award will be cover the kind and amount of securities and/or other property receivable as a result of such Qualifying Event by the holder of a number of Common Shares subject to the Award immediately prior to such Qualifying Event; or (iii) the Award will be cancelled in its entirety and repurchased by the Company at a specific price equal to the Fair Market Value of the Common Shares underlying the Award and that, upon the occurrence of such Qualifying Event, the Award will terminate and be of no further force or effect and no longer be outstanding. In the event of any conflict or inconsistency between the terms and conditions of this Paragraph 7(b) and the terms and conditions of Sections 12(b) and/or 13 of the Plan, the terms and condition of this Paragraph 7(b) shall control. The Committee's election pursuant to this Paragraph 7(b) will be applied in the same manner to all other holders of the Company's awards whose award agreements contain a similar provision. The Committee may only elect the alternatives specified in clauses (i) or (iii) of the first sentence of this Paragraph 7(b) in connection with any Qualifying Event described in clauses (iii)(A) or (iii)(C) of the definition of "Change of Control" (as such term is defined in the Plan).

8. Withholding Taxes.

(a) Participant is liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company takes with respect to any tax withholding obligations that arise in connection with the Award. The Company does not make any representation or undertaking regarding the treatment of any tax withholding in

connection with the grant, vesting or settlement of the Award or the subsequent sale of Common Shares issuable pursuant to the Award. The Company does not commit and is under no obligation to structure the Award to reduce or eliminate Participant's tax liability.

(b) Prior to any event in connection with the Award (e.g., vesting or payment in respect of the Award) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the "Tax Withholding Obligation"), Participant is required to arrange for the satisfaction of the amount of such Tax Withholding Obligation in a manner acceptable to the Company.

(c) Unless the Committee provides otherwise, at any time not less than five (5) business days before any Tax Withholding Obligation arises (e.g., a Settlement Date), Participant shall notify the Company of Participant's election to pay Participant's Tax Withholding Obligation by wire transfer, cashier's check or other means permitted by the Company. In such case, Participant shall satisfy his or her tax withholding obligation by paying to the Company on such date as it shall specify an amount that the Company determines is sufficient to satisfy the expected Tax Withholding Obligation by (i) wire transfer to such account as the Company may direct, (ii) delivery of a cashier's check payable to the Company, Attn: General Counsel, at the Company's principal executive offices, or such other address as the Company may from time to time direct, or (iii) such other means as the Company may establish or permit (including by means of a "same day sale" program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company and applicable law). Participant agrees and acknowledges that prior to the date the Tax Withholding Obligation arises, the Company will be required to estimate the amount of the Tax Withholding Obligation and accordingly may require the amount paid to the Company under this Paragraph 8(c) to be more than the minimum amount that may actually be due and that, if Participant has not delivered payment of a sufficient amount to the Company to satisfy the Tax Withholding Obligation (regardless of whether as a result of the Company underestimating the required payment or Participant failing to timely make the required payment), the additional Tax Withholding Obligation amounts shall be satisfied such other means as the Committee deems appropriate.

9. Securities Law Compliance. Participant understands that the Company is under no obligation to register for resale the Common Shares issued upon exercise of the Award. The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by Participant or other subsequent transfers by Participant of any Common Shares issued as a result of or under this Award, including without limitation (i) restrictions under an insider trading policy, (ii) restrictions that may be necessary in the absence of an effective registration statement under the Securities Act of 1933, as amended, covering the Award and/or the Common Shares underlying the Award and (iii) restrictions as to the use of a specified brokerage firm or other agent for such resales or other transfers. Any sale of the Common Shares must also comply with other applicable laws and regulations governing the sale of such shares.

10. Assignment or Transfer Prohibited. The Award (whether or not vested) may not be assigned or transferred otherwise than by will or by the laws of descent and distribution; provided, however, Participant may assign or transfer the Award to the extent permitted under the Plan, provided that the Award shall be subject to all the terms and condition of the Plan, this Agreement and any other terms required by the Committee as a condition to such transfer. Neither the Award nor any right hereunder shall be subject to attachment, execution or other similar process. In the event of any attempt by Participant to alienate, assign, pledge, hypothecate or otherwise dispose of the Award or any right hereunder, except as provided for herein, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Award by notice to Participant, and the Award shall thereupon become null and void.

11. Committee Authority. Any question concerning the interpretation of this Agreement or the Plan, any adjustments required to be made under this Agreement or the Plan, and any controversy that may arise under this Agreement or the Plan shall be determined by the Committee in its sole and absolute discretion. All decisions by the Committee shall be final and binding.

12. Application of the Plan. The terms of this Agreement are governed by the terms of the Plan, as it exists on the date of hereof and as the Plan is amended from time to time. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the terms of the Plan shall control, except as expressly stated

otherwise herein. As used herein, the term "Section" generally refers to provisions within the Plan, and the term "Paragraph" refers to provisions of this Agreement.

13. No Right to Continued Employment. Nothing in the Plan, in this Agreement or any other instrument executed pursuant thereto or hereto shall confer upon Participant any right to continued employment with the Company or any of its Subsidiaries or affiliates.

14. Further Assurances. Each party hereto shall cooperate with each other party, shall do and perform or cause to be done and performed all further acts and things, and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan.

15. Entire Agreement. This Agreement and the Plan together set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior oral and written and all contemporaneous or subsequent oral discussions, agreements and understandings of any kind or nature.

16. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and Participant and Participant's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HERBALIFE LTD.

[Participant]

By: _____

Name:

Title:

**HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN
STOCK UNIT AWARD AGREEMENT
DEFERRAL ELECTION FORM**

Effective as of _____, the undersigned hereby irrevocably elects (the "Election") to defer receipt of certain common shares (the "Common Shares") of Herbalife Ltd. (the "Company") related to the Stock Units (the "Award") awarded under and pursuant to the Stock Unit Award Agreement dated _____ (the "Award Agreement") and the Herbalife Ltd. 2005 Stock Incentive Plan, as amended from time to time (the "Plan"). This deferral shall be made in accordance with the terms and provisions outlined in this Election in the manner and amount set forth below.

In making this election, the following rules apply:

- You may elect to defer the settlement of all or a portion of your Award. Your deferral must be expressed as a percentage of the Stock Units subject to the Award, and will apply with respect to that percentage of the Stock Units that vest on each Vesting Date (other than any Vesting Date that occurs prior to the date that is 12 months following the date on which this Election is received by the Company).
- If you elect to defer the settlement of all or a portion of your Award, you will receive the Common Shares subject to your Vested Units (as such term is defined in the Award Agreement) upon the first to occur of (a) a date specified in this Election or (b) a termination of your employment with the Company for any reason.

Manner of Transfer

In general, all deferrals pursuant to this election will be paid out in Common Shares. Subject to the terms and conditions of the Award Agreement and the Plan and additional delays described in Paragraph 4 below under Terms and Conditions, all of the Common Shares you are entitled to receive on the Settlement Date specified in this Election will be transferred to you on the applicable Settlement Date.

Amount of the Deferral

I hereby irrevocably elect to defer settlement of _____ % of the Stock Units subject to the Award.

Duration of the Deferral

Settlement of that portion of the Award specified above shall be deferred until [by checking the appropriate box below and, if applicable, filling in the distribution date]:

- _____, 20____ [Note: this date must be after the final vesting date of the Award], but in no event later than a termination of my employment with the Company; or
- termination of my employment with the Company.

Change in Control

I hereby acknowledge that unless I elect hereunder **not** to receive payment in respect of that portion of the Award deferred hereunder upon a Section 409A Change in Control Event (as defined herein), I will automatically receive payment in respect of that portion of the Award deferred hereunder upon the consummation of either (i) a “change in the ownership” of the Company, (ii) a “change in the effective control” of the Company or (iii) a “change in the ownership of a substantial portion of the assets” of the Company (each as defined under Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and collectively referred to herein as a “**Section 409A Change in Control Event**”).

[You must indicate your election **not** to receive payment upon a Section 409A Change in Control Event by checking the box and initialing to the left]

Terms and Conditions

By signing this form, you acknowledge your understanding and acceptance of the following:

1. **Submission of Election to the Company.** You understand that the Election must be submitted to the Company within 30 days following the date the Award was granted.
 2. **Tax Withholding Obligation.** No Common Shares will be issued to you unless on the Settlement Date unless the Tax Withholding Obligation set forth in Paragraph 9 of the Agreement is satisfied.
 3. **Cash Dividends.** You will be credited with additional Stock Units (the settlement of which shall be deferred hereunder) having a value equal to any cash dividends declared by the Company with record dates that occur prior to the settlement of the Award as if the Common Shares underlying that portion of the Award that is deferred hereunder had been issued and outstanding, based on the fair market value of a Common Share on the applicable dividend payment date. Any such additional Stock Units shall be considered part of the Award and shall also be credited with additional Stock Units as dividends, if any, are declared, and shall be subject to all of the terms and conditions set forth herein.
 4. **Automatic Delay for Specified Employees.** If the Company determines that as of the Settlement Date you are a “specified employee” (as such term is defined under Section 409A of the Code), any Common Shares to be issued to you on a Settlement Date that occurs by reason of your termination of employment with the Company other by reason of your death or “disability (as such term is defined under Section 409A of the Code) will not be issued to you until the date that is six months following the Settlement Date (or such earlier time permitted under Section 409A of the Code without the imposition of any accelerated or additional taxes under Section 409A of the Code).
 5. **ERISA Status.** This Election comprises a portion of a plan is intended to be an unfunded plan that is maintained primarily to provide deferred compensation to a select group of “management or highly compensated employees” within the meaning of Sections 201, 301, and 401 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and therefore to be exempt from the provisions of Parts 2, 3, and 4 of Title I of ERISA.
 6. **Administration.** This Election is administered and interpreted by the Committee (as such term is defined in the Plan). The Committee has full and exclusive discretion to interpret and administer this Election. All actions, interpretations and decisions of the Committee are conclusive and binding on all persons, and will be given the maximum possible deference allowed by law.
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7. **Claims Procedure.** Any person who believes he or she is entitled to any payment under this Election may submit a claim in writing to the Company. If the claim is denied (either in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Agreement or the Plan on which the denial is based. The notice will describe any additional information needed to support the claim. The denial notice will be provided within ninety (90) days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial ninety-day period.
8. **Appeals Procedure.** If a claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Company for a review of the decision denying the claim. The claimant (or representative) then has the right to review pertinent documents and to submit issues and comments in writing. The Company will provide written notice of its decision on review within sixty (60) days after it receives a review request. If additional time (up to sixty (60) days) is needed to review the request, the claimant will be given written notice of the reason for the delay. Any claims for benefits under this Election brought in a court of law must be filed in such court before the earlier of ninety (90) days after any appeal pursuant to this Paragraph 8 or one (1) year from the date the claim arose.

Submitted by:

Accepted by:

HERBALIFE LTD

[Participant]

By: _____

Name:

Title:

HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN
STOCK UNIT AWARD AGREEMENT

This Stock Unit Award Agreement (this "Agreement") is dated as of this day of , 2007 (the "Grant Date"), and is between Herbalife Ltd. (the "Company") and ("Participant").

WHEREAS, the Company, by action of the Board and approval of its shareholders established the Herbalife Ltd. 2005 Stock Incentive Plan (the "Plan");

WHEREAS, Participant is employed by the Company or one or more of its Subsidiaries and the Company desires to encourage Participant to own Common Shares for the purposes stated in Section 1 of the Plan;

WHEREAS, Participant and the Company have entered into this Agreement to govern the terms of the Stock Unit Award (as defined below) granted to Participant by the Company.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Grant.

(a) The Company hereby grants to Participant an Award of Stock Units (the "Award") in accordance with Section 9 of the Plan and subject to the conditions set forth in this Agreement and the Plan (as amended from time to time). Each Stock Unit represents the right to receive one Common Share (as adjusted from time to time pursuant to Section 12 of the Plan) subject to the fulfillment of the vesting and other conditions set forth in this Agreement. By accepting the Award, Participant irrevocably agrees on behalf of Participant and Participant's successors and permitted assigns to all of the terms and conditions of the Award as set forth in or pursuant to this Agreement and the Plan (as such Plan may be amended from time to time).

(b) Except as otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Plan.

2. Vesting.

(a) Participant's Stock Units and rights in and to the Common Shares subject to the Stock Units shall not be vested as of the Grant Date and shall be forfeitable unless and until otherwise vested pursuant to the terms of this Agreement. Subject to Participant's continued employment with the Company and/or its subsidiaries or affiliates the Award (or as otherwise provided in Paragraph 5) shall become vested in accordance with the following schedule: (i) one-third of the Stock Units subject to the Award shall vest on the date that is thirteen (13) months following the Grant Date, (ii) one-third of the Stock Units subject to the Award shall vest on the second anniversary of the Grant Date, and (iii) the remaining one-third of the Stock Units subject to the Award shall vest on third anniversary of the Grant Date (each such date a "Vesting Date"). Stock Units that have vested and are no longer subject to forfeiture are referred to herein as "Vested Units." Stock Units that are not vested and remain subject to forfeiture are referred to herein as "Unvested Units."

(b) In the event of a Change of Control, the Committee as constituted immediately before such Change of Control may, in its sole discretion, accelerate the vesting of this Award upon such Change of Control or take such other actions as provided in Section 13 of the Plan.

3. Settlement of Stock Units.

(a) Subject to any deferral pursuant to Paragraph 3(b), each Vested Unit will be settled by the delivery of one Common Share (subject to adjustment under Section 12 of the Plan) to Participant or, in the event of Participant's death, to Participant's estate, heir or beneficiary, following the applicable Vesting Date; provided that the Participant has satisfied all of the tax withholding obligations described in Paragraph 7, and that Participant has completed, signed and returned any documents and taken any additional action that the Company deems appropriate to enable it to accomplish the delivery of the Common Shares.

(b) Subject to the satisfaction all of the tax withholding obligations described in Paragraph 7, Participant may elect to defer the receipt of any Common Shares issuable pursuant to Vested Units by submitting to the Company an election to defer receipt in the forms attached hereto as Exhibit A. In the event Participant intends to defer the receipt of any Common Shares, Participant must submit to the Company a deferral election form within thirty (30) days following the Grant Date. Participant hereby represents that Participant understands the effect of any such deferral under relevant federal, state and local tax laws.

(c) The date upon which Common Shares are to be issued under either Paragraph 3(a) or 3(b) above is referred to as the "Settlement Date." The issuance of the Common Shares hereunder may be effected by the issuance of a stock certificate, recording shares on the stock records of the Company or by crediting shares in an account established on Participant's behalf with a brokerage firm or other custodian, in each case as determined by the Company. Fractional shares will not be issued pursuant to the Award.

(d) Notwithstanding the above, (i) for administrative or other reasons, the Company may from time to time temporarily suspend the issuance of Common Shares in respect of Vested Units, (ii) the Company shall not be obligated to deliver any shares of the Common Stock during any period when the Company determines that the delivery of shares hereunder would violate any federal, state or other applicable laws, (iii) the Company may issue Common Shares hereunder subject to any restrictive legends that, as determined by the Company's counsel, are necessary to comply with securities or other regulatory requirements and (iv) the date on which shares are issued hereunder may include a delay in order to provide the Company such time as it determines appropriate to address tax withholding and other administrative matters.

4. Shareholder Rights. Prior to any issuance of Common Shares in settlement of the Award, no Common Shares will be reserved or earmarked for Participant or Participant's account nor shall Participant have any of the rights of a stockholder with respect to such Common Shares. Except as set forth in Paragraph 5, the Participant will not be entitled to any privileges of ownership of the Common Shares (including, without limitation, any voting rights) underlying Vested Units and/or Unvested Units unless and until Common Shares are actually delivered to Participant hereunder.

5. Dividend Equivalent Rights. From and after the Grant Date and unless and until the Award is forfeited or otherwise transferred back to the Company, Participant will be credited with additional Stock Units having a value equal to dividends declared by the Company, if any, with record dates that occur prior to the settlement of the Award as if the Common Shares underlying the Award had been issued and outstanding, based on the Fair Market Value of a Common Share on the applicable dividend payment date. Any such additional Stock Units shall be considered part of the Award and shall also be credited with additional Stock Units as dividends, if any, are declared, and shall be subject to the same restrictions and conditions as the Stock Units subject to the Award with respect to which they were credited (including, but not limited to, the forfeiture provisions set forth in Paragraph 6). Notwithstanding the foregoing, no such additional Stock Units will be credited with respect to any dividend declared by the Company in connection with which the Award is adjusted pursuant to Section 12 of the Plan.

6. Effect of Termination of Employment. Except as provided in the Plan, upon a termination of Participant's employment with the Company for any reason, the Unvested Units shall be forfeited by Participant and cancelled and surrendered to the Company without payment of any consideration to Participant.

7. Withholding Taxes.

(a) Participant is liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company takes with respect to any tax withholding obligations that arise in connection with the Award. The Company does not make any representation or undertaking regarding the treatment of any tax withholding in connection with the grant, vesting or settlement of the Award or the subsequent sale of Common Shares issuable pursuant to the Award. The Company does not commit and is under no obligation to structure the Award to reduce or eliminate Participant's tax liability.

(b) Prior to any event in connection with the Award (e.g., vesting or payment in respect of the Award) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the "Tax Withholding Obligation"), Participant is required to arrange for the satisfaction of the amount of such Tax Withholding Obligation in a manner acceptable to the Company.

(c) Unless the Committee provides otherwise, at any time not less than five (5) business days before any Tax Withholding Obligation arises (e.g., a Settlement Date), Participant shall notify the Company of Participant's election to pay Participant's Tax Withholding Obligation by wire transfer, cashier's check or other means permitted by the Company. In such case, Participant shall satisfy his or her tax withholding obligation by paying to the Company on such date as it shall specify an amount that the Company determines is sufficient to satisfy the expected Tax Withholding Obligation by (i) wire transfer to such account as the Company may direct, (ii) delivery of a cashier's check payable to the Company, Attn: General Counsel, at the Company's principal executive offices, or such other address as the Company may from time to time direct, or (iii) such other means as the Company may establish or permit (including by means of a "same day sale" program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company and applicable law). Participant agrees and acknowledges that prior to the date the Tax Withholding Obligation arises, the Company will be required to estimate the amount of the Tax Withholding Obligation and accordingly may require the amount paid to the Company under this Paragraph 7(c) to be more than the minimum amount that may actually be due and that, if Participant has not delivered payment of a sufficient amount to the Company to satisfy the Tax Withholding Obligation (regardless of whether as a result of the Company underestimating the required payment or Participant failing to timely make the required payment), the additional Tax Withholding Obligation amounts shall be satisfied such other means as the Committee deems appropriate.

8. Securities Law Compliance. Participant understands that the Company is under no obligation to register for resale the Common Shares issued upon exercise of the Award. The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by Participant or other subsequent transfers by Participant of any Common Shares issued as a result of or under this Award, including without limitation (i) restrictions under an insider trading policy, (ii) restrictions that may be necessary in the absence of an effective registration statement under the Securities Act of 1933, as amended, covering the Award and/or the Common Shares underlying the Award and (iii) restrictions as to the use of a specified brokerage firm or other agent for such resales or other transfers. Any sale of the Common Shares must also comply with other applicable laws and regulations governing the sale of such shares.

9. Assignment or Transfer Prohibited. The Award (whether or not vested) may not be assigned or transferred otherwise than by will or by the laws of descent and distribution; provided, however, Participant may assign or transfer the Award to the extent permitted under the Plan, provided that the Award shall be subject to all the terms and condition of the Plan, this Agreement and any other terms required by the Committee as a condition to such transfer. Neither the Award nor any right hereunder shall be subject to attachment, execution or other similar process. In the event of any attempt by Participant to alienate, assign, pledge, hypothecate or otherwise dispose of the Award or any right hereunder, except as provided for herein, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Award by notice to Participant, and the Award shall thereupon become null and void.

10. Committee Authority. Any question concerning the interpretation of this Agreement or the Plan, any adjustments required to be made under this Agreement or the Plan, and any controversy that may arise under this Agreement or the Plan shall be determined by the Committee in its sole and absolute discretion. All decisions by the Committee shall be final and binding.

11. Application of the Plan. The terms of this Agreement are governed by the terms of the Plan, as it exists on the date of hereof and as the Plan is amended from time to time. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the terms of the Plan shall control, except as expressly stated otherwise herein. As used herein, the term "Section" generally refers to provisions within the Plan, and the term "Paragraph" refers to provisions of this Agreement.

12. No Right to Continued Employment. Nothing in the Plan, in this Agreement or any other instrument executed pursuant thereto or hereto shall confer upon Participant any right to continued employment with the Company or any of its Subsidiaries or affiliates.

13. Further Assurances. Each party hereto shall cooperate with each other party, shall do and perform or cause to be done and performed all further acts and things, and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan.

14. Entire Agreement. This Agreement and the Plan together set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior oral and written and all contemporaneous or subsequent oral discussions, agreements and understandings of any kind or nature.

15. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and Participant and Participant's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HERBALIFE LTD.

[Participant]

By: _____

Name:

Title:

**HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN
STOCK UNIT AWARD AGREEMENT
DEFERRAL ELECTION FORM**

Effective as of _____, the undersigned hereby irrevocably elects (the "Election") to defer receipt of certain common shares (the "Common Shares") of Herbalife Ltd. (the "Company") related to the Stock Units (the "Award") awarded under and pursuant to the Stock Unit Award Agreement dated _____ (the "Award Agreement") and the Herbalife Ltd. 2005 Stock Incentive Plan, as amended from time to time (the "Plan"). This deferral shall be made in accordance with the terms and provisions outlined in this Election in the manner and amount set forth below.

In making this election, the following rules apply:

- You may elect to defer the settlement of all or a portion of your Award. Your deferral must be expressed as a percentage of the Stock Units subject to the Award, and will apply with respect to that percentage of the Stock Units that vest on each Vesting Date (other than any Vesting Date that occurs prior to the date that is 12 months following the date on which this Election is received by the Company).
- If you elect to defer the settlement of all or a portion of your Award, you will receive the Common Shares subject to your Vested Units (as such term is defined in the Award Agreement) upon the first to occur of (a) a date specified in this Election or (b) a termination of your employment with the Company for any reason.

Manner of Transfer

In general, all deferrals pursuant to this election will be paid out in Common Shares. Subject to the terms and conditions of the Award Agreement and the Plan and additional delays described in Paragraph 4 below under Terms and Conditions, all of the Common Shares you are entitled to receive on the Settlement Date specified in this Election will be transferred to you on the applicable Settlement Date.

Amount of the Deferral

I hereby irrevocably elect to defer settlement of _____ % of the Stock Units subject to the Award.

Duration of the Deferral

Settlement of that portion of the Award specified above shall be deferred until [by checking the appropriate box below and, if applicable, filling in the distribution date]:

- , 20 [Note: this date must be after the final vesting date of the Award], but in no event later than a termination of my employment with the Company; or
- termination of my employment with the Company.

Change in Control

- I hereby acknowledge that unless I elect hereunder **not** to receive payment in respect of that portion of the Award deferred hereunder upon a Section 409A Change in Control Event (as defined herein), I will automatically receive payment in respect of that portion of the Award deferred hereunder upon the consummation of either (i) a “change in the ownership” of the Company, (ii) a “change in the effective control” of the Company or (iii) a “change in the ownership of a substantial portion of the assets” of the Company (each as defined under Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and collectively referred to herein as a “Section 409A Change in Control Event”).

[You must indicate your election **not** to receive payment upon a Section 409A Change in Control Event by checking the box and initialing to the left]

Terms and Conditions

By signing this form, you acknowledge your understanding and acceptance of the following:

1. **Submission of Election to the Company.** You understand that the Election must be submitted to the Company within 30 days following the date the Award was granted.
 2. **Tax Withholding Obligation.** No Common Shares will be issued to you unless on the Settlement Date unless the Tax Withholding Obligation set forth in Paragraph 9 of the Agreement is satisfied.
 3. **Cash Dividends.** You will be credited with additional Stock Units (the settlement of which shall be deferred hereunder) having a value equal to any cash dividends declared by the Company with record dates that occur prior to the settlement of the Award as if the Common Shares underlying that portion of the Award that is deferred hereunder had been issued and outstanding, based on the fair market value of a Common Share on the applicable dividend payment date. Any such additional Stock Units shall be considered part of the Award and shall also be credited with additional Stock Units as dividends, if any, are declared, and shall be subject to all of the terms and conditions set forth herein.
 4. **Automatic Delay for Specified Employees.** If the Company determines that as of the Settlement Date you are a “specified employee” (as such term is defined under Section 409A of the Code), any Common Shares to be issued to you on a Settlement Date that occurs by reason of your termination of employment with the Company other by reason of your death or “disability (as such term is defined under Section 409A of the Code) will not be issued to you until the date that is six months following the Settlement Date (or such earlier time permitted under Section 409A of the Code without the imposition of any accelerated or additional taxes under Section 409A of the Code).
 5. **ERISA Status.** This Election comprises a portion of a plan is intended to be an unfunded plan that is maintained primarily to provide deferred compensation to a select group of “management or highly compensated employees” within the meaning of Sections 201, 301, and 401 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and therefore to be exempt from the provisions of Parts 2, 3, and 4 of Title I of ERISA.
 6. **Administration.** This Election is administered and interpreted by the Committee (as such term is defined in the Plan). The Committee has full and exclusive discretion to interpret and administer this Election. All actions, interpretations and decisions of the Committee are conclusive and binding on all persons, and will be given the maximum possible deference allowed by law.
-

7. **Claims Procedure.** Any person who believes he or she is entitled to any payment under this Election may submit a claim in writing to the Company. If the claim is denied (either in full or in part), the claimant will be provided a written notice explaining the specific reasons for the denial and referring to the provisions of the Agreement or the Plan on which the denial is based. The notice will describe any additional information needed to support the claim. The denial notice will be provided within ninety (90) days after the claim is received. If special circumstances require an extension of time (up to 90 days), written notice of the extension will be given within the initial ninety-day period.
8. **Appeals Procedure.** If a claimant's claim is denied, the claimant (or his or her authorized representative) may apply in writing to the Company for a review of the decision denying the claim. The claimant (or representative) then has the right to review pertinent documents and to submit issues and comments in writing. The Company will provide written notice of its decision on review within sixty (60) days after it receives a review request. If additional time (up to sixty (60) days) is needed to review the request, the claimant will be given written notice of the reason for the delay. Any claims for benefits under this Election brought in a court of law must be filed in such court before the earlier of ninety (90) days after any appeal pursuant to this Paragraph 8 or one (1) year from the date the claim arose.

Submitted by:

Accepted by:

HERBALIFE LTD.

[Participant]

By: _____

Name: _____

Title: _____

**HERBALIFE LTD.
2005 STOCK INCENTIVE PLAN**

STOCK APPRECIATION RIGHT AWARD AGREEMENT

STOCK APPRECIATION RIGHT AGREEMENT (this "Agreement") dated as of _____, 2007 (the "Grant Date") between HERBALIFE LTD. (the "Company"), and _____ ("Participant").

WHEREAS, pursuant to the Herbalife Ltd. 2005 Stock Incentive Plan (the "Plan"), the Committee designated under the Plan (or an officer of the Company to whom the authority to grant Awards has been delegated), desires to grant to Participant an award of stock appreciation rights; and

WHEREAS, Participant desires to accept such award subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the Company and Participant, intending to be legally bound, hereby agree as follows:

1. Grant.

(a) The Company hereby grants to the Participant an Award of _____ Stock Appreciation Rights (the "Award") in accordance with Section 8 of the Plan and subject to the terms and conditions set forth herein and in the Plan (each as amended from time to time). Each Stock Appreciation Right represents the right to receive, upon exercise of the Stock Appreciation Right pursuant to this Agreement, from the Company, a payment, paid in Common Shares, par value \$.002 per share, of the Company (the "Common Shares"), equal to (i) the excess of the Fair Market Value, on the date of exercise, of one Common Share (as adjusted from time to time pursuant to Section 12 of the Plan) over the Base Price (as defined below) of the Stock Appreciation Right, divided by (ii) the Fair Market Value, on the date of exercise, of one Common Share, subject to terms and conditions set forth herein and in the Plan (each as amended from time to time).

(b) The "Base Price" for the Stock Appreciation Right shall be \$ _____ per share (subject to adjustment as set forth in Section 12 of the Plan).

(c) Except as otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Plan.

2. Time for Exercise.

(a) The Award will become vested and exercisable in accordance with the following schedule: (i) 20% of the Stock Appreciation Rights will become vested and exercisable on the first anniversary of the Grant Date, (ii) 20% of the Stock Appreciation Rights will become vested and exercisable on the second anniversary of the Grant Date and (iii) the remaining 60% of the Stock Appreciation Rights subject to the Award will become vested and exercisable on the third anniversary of the Grant Date.

(b) In the event of a Change of Control, the Committee as constituted immediately before such Change of Control may, in its sole discretion, accelerate the vesting and exercisability of this Award upon such Change of Control or take such other actions as provided in Section 13 of the Plan.

3. Expiration. The Award shall expire on the tenth (10th) anniversary of the date hereof; provided, however, that the Award may earlier terminate as provided in this Paragraph 3 and/or in Section 13 of the Plan.

(a) Upon termination of Participant's employment with the Company for any reason, that portion of the Award that is not vested and exercisable (after giving effect to any acceleration of vesting pursuant to this Agreement or otherwise) will terminate on the date of such termination of employment.

(b) Upon termination of Participant's employment with the Company, that portion of the Award that is vested and exercisable, will terminate in accordance with the following:

(i) if Participant's employment with the Company is terminated for Cause, the vested and exercisable portion of the Award will terminate on the date of such termination;

(ii) if Participant's employment with the Company is terminated by reason of Participant's death or disability (as such term is defined in Section 22(e) of the Code), the vested and exercisable portion of the Award will terminate on the date that is ninety (90) days immediately following the date of such termination;

(iii) if Participant's employment with the Company is terminated for any reason other than death, disability or Cause, the vested and exercisable portion of the Award will terminate on the date that is thirty (30) days immediately following the date of such termination.

(c) Notwithstanding anything herein to the contrary, if Participant's employment with the Company is terminated for any reason other than a termination by the Company for Cause, and at any time during the thirty-day period following the effective date of such termination of employment Participant is subject to a "trading blackout" or "quiet period" with respect to the Common Shares or if the Company determines, upon the advice of legal counsel, that Participant may not to trade in the Common Shares due to Participant's possession of material non-public information, the Company shall extend the period during which Participant may exercise his then remaining vested portion of this Award until the later of (i) the expiration date of the Award determined pursuant to Paragraph 2(b) and (ii) the date that is thirty days following the first date on which Participant is no longer subject to such restrictions on trading with respect to the Common Shares.

(d) For purposes of this Agreement, the term "Cause" shall have the meaning ascribed to such term in any written employment agreement between Participant and the Company or one or more of its Subsidiaries, as the same may be amended or modified from time to time, or if Participant is not party to any such written employment agreement, then the term "Cause" shall mean the occurrence of any of the following acts or circumstances: (i) conviction of a felony, a crime of moral turpitude, dishonesty, breach of trust or unethical business conduct, or any crime involving the Company or any of its Subsidiaries; (ii) willful misconduct, willful or gross neglect, fraud, misappropriation or embezzlement; (iii) performance of Participant's duties in a manner that is detrimental to the Company or any of its Subsidiaries, including, but not limited to that which results in, the severe deterioration of the financial performance of the Company or any of its Subsidiaries; (iv) failure to adhere to the reasonable/lawful directions of the Chief Executive Officer of the Company or the Board, to adhere to the Company's or any Subsidiary's policies or practices or to devote substantially all of Participant's business time and efforts to the business of the Company; (v) breach of any provision of any agreement, including an employment agreement, between Participant and the Company or any of its Subsidiaries, which covers confidentiality or proprietary information or contains nonsolicitation or non-competition provisions; or (vi) breach in any material respect of the terms and provisions of Participant's employment agreement, if any, or any agreement between Participant and the Company or any of its Subsidiaries.

4. Method of Exercise. The Award may be exercised by delivery to the Company (attention: Secretary) of a notice of exercise in the form specified by the Company specifying the number of shares with respect to which the Award is being exercised.

5. Fractional Shares. No fractional shares may be purchased upon any exercise.

6. Compliance With Legal Requirements.

(a) The Award shall not be exercisable and no Common Shares shall be issued or transferred pursuant to this Agreement or the Plan unless and until the Tax Withholding Obligation (as defined below), and all legal requirements applicable to such issuance or transfer have, in the opinion of counsel to the Company, been satisfied. Such legal requirements may include, but are not limited to, (i) registering or qualifying such Common Shares under any state or federal law or under the rules of any stock exchange or trading system, (ii) satisfying any applicable law or rule relating to the transfer of unregistered securities or demonstrating the availability of an exemption from applicable laws, (iii) placing a restricted legend on the Common Shares issued pursuant to the exercise of the Award, or (iv) obtaining the consent or approval of any governmental regulatory body.

(b) Participant understands that the Company is under no obligation to register for resale the Common Shares issued upon exercise of the Award. The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any exercise of the Award and/or any resales by Participant or other subsequent transfers by Participant of any Common Shares issued as a result of the exercise of the Award, including without limitation (i) restrictions under an insider trading policy, (ii) restrictions that may be necessary in the absence of an effective registration statement under the Securities Act of 1933, as amended, covering the Award and/or the Common Shares underlying the Award and (iii) restrictions as to the use of a specified brokerage firm or other agent for exercising the Award and/or for such resales or other transfers. The sale of the shares underlying the Award must also comply with other applicable laws and regulations governing the sale of such shares.

7. Shareholder Rights. Participant shall not be deemed a shareholder of the Company with respect to any of the Common Shares subject to the Award, except to the extent that such shares shall have been purchased and transferred to Participant.

8. Withholding Taxes.

(a) Participant is liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company takes with respect to any tax withholding obligations that arise in connection with the Award. The Company does not make any representation or undertaking regarding the treatment of any tax withholding in connection with the grant, vesting or settlement of the Award or the subsequent sale of Common Shares issuable pursuant to the Award. The Company does not commit and is under no obligation to structure the Award to reduce or eliminate Participant's tax liability.

(b) Prior to any event in connection with the Award (e.g., vesting or payment in respect of the Award) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the "Tax Withholding Obligation"), Participant is required to arrange for the satisfaction of the amount of such Tax Withholding Obligation in a manner acceptable to the Company.

(c) Unless the Committee provides otherwise, at any time not less than five (5) business days before any Tax Withholding Obligation arises (e.g., at the time the Award is exercised, in whole or in part), Participant shall notify the Company of Participant's election to pay Participant's Tax Withholding Obligation by wire transfer, cashier's check or other means permitted by the Company. In such case, Participant shall satisfy his or her tax withholding obligation by paying to the Company on such date as it shall specify an amount that the Company determines is sufficient to satisfy the expected Tax Withholding Obligation by (i) wire transfer to such account as the Company may direct, (ii) delivery of a cashier's check payable to the Company, Attn: General Counsel, at the Company's principal executive offices, or such other address as the Company may from time to time direct, or (iii) such other means as the Company may establish or permit. Participant agrees and acknowledges that prior to the date the Tax Withholding Obligation arises, the Company will be required to estimate the amount of the Tax Withholding Obligation and accordingly may require the amount paid to the Company under this Paragraph 8(c) to be more than the minimum amount that may actually be due and that, if Participant has not delivered payment of a sufficient amount to the Company to satisfy the Tax Withholding Obligation (regardless of whether as a result of the Company underestimating the required payment or Participant failing to timely make the required payment), the additional Tax Withholding Obligation amounts shall be satisfied such other means as the Committee deems appropriate.

9. Assignment or Transfer Prohibited. The Award may not be assigned or transferred otherwise than by will or by the laws of descent and distribution, and may be exercised during the life of Participant only by Participant or Participant's guardian or legal representative. Neither the Award nor any right hereunder shall be subject to attachment, execution or other similar process. In the event of any attempt by Participant to alienate, assign, pledge, hypothecate or otherwise dispose of the Award or any right hereunder, except as provided for herein, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Award by notice to Participant, and the Award shall thereupon become null and void.

10. Committee Authority. Any question concerning the interpretation of this Agreement or the Plan, any adjustments required to be made under this Agreement or the Plan, and any controversy that may arise under this Agreement or the Plan shall be determined by the Committee in its sole and absolute discretion. All decisions by the Committee shall be final and binding.

11. Application of the Plan. The terms of this Agreement are governed by the terms of the Plan, as it exists on the date of hereof and as the Plan is amended from time to time. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the terms of the Plan shall control, except as expressly stated otherwise herein. As used herein, the term "Section" generally refers to provisions within the Plan, and the term "Paragraph" refers to provisions of this Agreement.

12. No Right to Continued Employment. Nothing in the Plan, in this Agreement or any other instrument executed pursuant thereto or hereto shall confer upon Participant any right to continued employment with the Company or any of its subsidiaries or affiliates.

13. Further Assurances. Each party hereto shall cooperate with each other party, shall do and perform or cause to be done and performed all further acts and things, and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan.

14. Entire Agreement. This Agreement and the Plan together set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior oral and written and all contemporaneous or subsequent oral discussions, agreements and understandings of any kind or nature.

15. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and Participant and Participant's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HERBALIFE LTD.

[Participant]

By: _____
Name:
Title:

**FIRST AMENDMENT TO
CREDIT AGREEMENT**

Dated as of July 26, 2012

among

**HERBALIFE INTERNATIONAL, INC., HERBALIFE LTD. and
HERBALIFE INTERNATIONAL LUXEMBOURG S.A.R.L.,**
as Borrowers,

BANK OF AMERICA, N.A.,

as Administrative Agent, Swing Line Lender and L/C Issuer,

and

The Other Lenders Party Hereto

**COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH**
as Documentation Agent for the Revolving Credit Facility

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
and J.P. MORGAN SECURITIES LLC**
as Joint Lead Arrangers and Joint Book Managers for the Revolving Credit Facility

**COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH
and HSBC BANK USA, NATIONAL ASSOCIATION**
as Co-Syndication Agents for the Term A Facility

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Documentation Agent for the Term A Facility

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH,
HSBC SECURITIES (USA) INC.**
and
WELLS FARGO SECURITIES, LLC
as Joint Lead Arrangers and Joint Book Managers for the Term A Facility

FIRST AMENDMENT TO CREDIT AGREEMENT

THIS FIRST AMENDMENT TO CREDIT AGREEMENT (this "Amendment") dated as of July 26, 2012 to the Credit Agreement referenced below is by and among HERBALIFE INTERNATIONAL, INC., a Nevada corporation (the "Company"), HERBALIFE LTD., a Cayman Islands exempted company incorporated with limited liability ("Holdings"), HERBALIFE INTERNATIONAL LUXEMBOURG S.À.R.L., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL") and, together with the Company and Holdings, the "Borrowers" and, each a "Borrower", each Lender party hereto and BANK OF AMERICA, N.A. ("Bank of America"), as Administrative Agent (in such capacity, the "Administrative Agent"), Swing Line Lender and L/C Issuer.

WITNESSETH

WHEREAS, the Borrowers, the Guarantors, certain Lenders (the "Existing Lenders") and Bank of America, as Administrative Agent, Swing Line Lender and L/C Issuer, are party to that certain Credit Agreement dated as of March 9, 2011 (the "Existing Credit Agreement"); and

WHEREAS, the Borrower has requested that the "Required Lenders" under and as defined in the Existing Credit Agreement (the "Existing Required Lenders") approve certain amendments and modifications, including the addition of a \$500,000,000 term loan facility, to the Existing Credit Agreement; and

WHEREAS, the Existing Required Lenders have approved the amendments and modifications to the Existing Credit Agreement requested by the Borrowers, and the Term A Lenders are willing to provide the Term A Facility, in each case as set forth in this Amendment.

NOW, THEREFORE, IN CONSIDERATION of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Amended Credit Agreement (as defined below).
2. Amendment and Restatement. The Existing Credit Agreement (including the Schedules and Exhibits thereto) is hereby amended and restated in its entirety to read in the form attached hereto as Exhibit A to this Amendment (the "Amended Credit Agreement"). Except as specifically set forth herein, the amendment and restatement in its entirety of the Existing Credit Agreement shall not, in any manner, be construed to constitute payment of, or impair, limit, cancel or extinguish, or constitute a novation in respect of, the "Obligations" under (and as defined in) the Existing Credit Agreement and the other Loan Documents (as defined in Existing Credit Agreement). All "Loans" and other "Obligations" outstanding under (and as defined in) the Existing Credit Agreement immediately prior to the effectiveness of this Amendment shall continue to be outstanding as Revolving Credit Loans and Obligations, respectively, under the Amended Credit Agreement upon the effectiveness of this Amendment, and the terms of the

Amended Credit Agreement will govern the rights and obligations of the Loan Parties, the Lenders and the Administrative Agent with respect thereto.

3. Lender Joinder. By execution of this Amendment, each Person identified on the signature pages hereto as a “Term A Lender”, in its capacity as such, hereby acknowledges, agrees and confirms that, by its execution of this Amendment, such Person will be deemed to be a party to the Amended Credit Agreement (to the extent not already a party thereto) and a “Term A Lender” for all purposes of the Amended Credit Agreement, and shall have all of the obligations of a Term A Lender thereunder as if it had executed the Amended Credit Agreement. Such Person hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions applicable to the Term A Lenders contained in the Amended Credit Agreement.

4. Conditions Precedent. The effectiveness of this Amendment and the Amended Credit Agreement, and the obligation of the Term A Lenders to make the Term A Loans pursuant to Section 2.01(b) of the Amended Credit Agreement, shall be subject to satisfaction of the following conditions:

(a) The Administrative Agent’s receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Restatement Effective Date (or, in the case of certificates of governmental officials, a recent date before the Restatement Effective Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Amendment;

(ii) Notes executed by each Borrower in favor of each Lender requesting Notes;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require (but only to the extent such concepts exist under applicable law) to evidence that each Loan Party is duly organized, incorporated or formed, and that each Borrower and Guarantor is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) favorable opinions of Gibson, Dunn & Crutcher, special counsel to the Loan Parties, in form and substance reasonably acceptable to the

Administrative Agent, Maples and Calder, special Cayman Islands counsel to the Loan Parties, in form and substance reasonably acceptable to the Administrative Agent, of Arendt & Medernach, special Luxembourg counsel to the Loan Parties, in form and substance reasonably acceptable to the Administrative Agent, and of Brownstein Hyatt Farber Schreck, LLP, special Nevada counsel to the Loan Parties, in form and substance reasonably acceptable to the Administrative Agent, each addressed to the Administrative Agent and each Lender;

(vi) a certificate of a Responsible Officer of Holdings either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against each Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a certificate signed by a Responsible Officer of Holdings certifying (A) that the conditions specified in Sections 4.02(a) and (b) of the Amended Credit Agreement have been satisfied (other than any such conditions as are subject to the judgment or discretion of the Administrative Agent or any Lender), (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) a calculation of the Consolidated Total Leverage Ratio as of the last day of the fiscal quarter of the Company most recently ended prior to the Restatement Effective Date for which financial statements have been delivered to the Administrative Agent, giving pro forma effect to the making of the Term A Loans on the Restatement Effective Date; and

(viii) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect.

(b) No event having a Material Adverse Effect shall have occurred since December 31, 2011.

(c) The representations and warranties of (i) the Borrowers contained in Article V of the Amended Credit Agreement and (ii) each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the proposed Restatement Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

(d) Any fees required to be paid on or before the Restatement Effective Date shall have been paid.

(e) Unless waived by the Administrative Agent, the Company shall have paid all reasonable and documented fees, charges and disbursements of counsel to the

Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Restatement Effective Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Company and the Administrative Agent).

(f) The Restatement Effective Date shall have occurred on or before August 31, 2012.

Without limiting the generality of the provisions of the last paragraph of Section 9.03 of the Amended Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 4, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Restatement Effective Date specifying its objection thereto.

5. Amendment is a Loan Document. This Amendment is a Loan Document and all references to a "Loan Document" in the Existing Credit Agreement, the Amended Credit Agreement and the other Loan Documents shall be deemed to include this Amendment.

6. Reaffirmation of Representations and Warranties. Each Loan Party represents and warrants as of the effective date of this Amendment that (i) each of the representations and warranties set forth in the Loan Documents are true and correct in all material respects on and as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case are true and correct in all material respects as of such earlier date, and except that for purposes of this Section 6, the representations and warranties contained in subsection (a) of Section 5.05 of the Existing Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clause (a) of Section 6.01 of the Existing Credit Agreement and (ii) both before and immediately following the consummation of the transactions contemplated hereby, no Default or Event of Default has occurred and is continuing.

7. Reaffirmation of Obligations. Each Loan Party (a) acknowledges and consents to all of the terms and conditions of this Amendment, (b) affirms all of its obligations, including, but not limited to, all guaranty obligations, under the Loan Documents after giving effect to this Amendment and (c) agrees that this Amendment and all documents executed in connection herewith do not operate to reduce or discharge such Loan Party's obligations under the Loan Documents.

8. Reaffirmation of Security Interests. Each Loan Party party to the Security Agreement (a) affirms that, as collateral security for the payment and performance in full of all the Secured Obligations (as defined in the Security Agreement), such Loan Party hereby grants to the Collateral Agent (as defined in the Security Agreement), for its benefit and for the benefit of the Secured Parties (as defined in the Security Agreement), a security interest in and continuing lien on all personal property of such Loan Party, including all of such Loan Party's right, title and interest in, to and under the Security Agreement Collateral (as defined in the

Security Agreement) and that each of the Liens granted in or pursuant to the Loan Documents are valid and subsisting and (b) agrees that this Amendment shall in no manner impair or otherwise adversely affect any of the Liens granted in or pursuant to the Loan Documents.

9. No Other Changes. Except as modified hereby, all of the terms and provisions of the Loan Documents shall remain in full force and effect.

10. Counterparts; Integration; Effectiveness. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Amendment, the Amended Credit Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4, this Amendment shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

11. Governing Law; Service of Process.

(a) Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

(b) Submission to Jurisdiction. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 OF THE AMENDED CREDIT AGREEMENT. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

12. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AMENDMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this First Amendment to be duly executed and delivered as of the date first above written.

HERBALIFE LTD., a Cayman Islands exempted company incorporated with limited liability, as Holdings

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL, INC., a Nevada corporation, as the Company

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL LUXEMBOURG S.Á.R.L., a Luxembourg private limited liability company, as a Borrower

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL OF AMERICA, INC., a Nevada corporation, as a Guarantor

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL COMMUNICATIONS, INC., a California corporation, as a Pledgor

By: _____
Name:
Title:

HERBALIFE TAIWAN, INC., a California corporation, as a Pledgor

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL DO BRASIL, LTDA., a corporation dually organized in Brazil and Delaware, as a Pledgor

By: _____
Name:
Title:

HERBALIFE KOREA CO., LTD., a corporation dually organized in Korea and Delaware, as a Pledgor

By: _____
Name:
Title:

HERBALIFE INTERNATIONAL OF EUROPE, INC., a California corporation, as a Guarantor

By: _____
Name:
Title:

WH INTERMEDIATE HOLDINGS LTD., a Cayman Islands exempted company incorporated with limited liability, as a Guarantor

By: _____
Name:
Title:

WH LUXEMBOURG HOLDINGS S.À.R.L., a
Luxembourg corporation, as a Guarantor

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Administrative Agent

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as an Existing
Lender, L/C Issuer and Swing Line Lender

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as a Term A Lender

By: _____
Name:
Title:

[OTHER LENDERS], as an Existing Lender

By: _____

Name:

Title:

[OTHER LENDERS], as a Term A Lender

By: _____

Name:

Title:

Exhibit A to First Amendment
Amended and Restated Credit Agreement
[Attached]

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of July 26, 2012

among

**HERBALIFE INTERNATIONAL, INC., HERBALIFE LTD. and
HERBALIFE INTERNATIONAL LUXEMBOURG S.A.R.L.,**
as Borrowers,

BANK OF AMERICA, N.A.,
as Administrative Agent, Swing Line Lender and L/C Issuer,
and

The Other Lenders Party Hereto

**COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH**
as Documentation Agent for the Revolving Credit Facility

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
and J.P. MORGAN SECURITIES LLC**
as Joint Lead Arrangers and Joint Book Managers for the Revolving Credit Facility

**COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH
and HSBC BANK USA, NATIONAL ASSOCIATION**
as Co-Syndication Agents for the Term A Facility

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Documentation Agent for the Term A Facility

**MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A.,
“RABOBANK NEDERLAND”, NEW YORK BRANCH,
HSBC SECURITIES (USA) INC.**
and
WELLS FARGO SECURITIES, LLC
as Joint Lead Arrangers and Joint Book Managers for the Term A Facility

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G	Designated Borrower Notice

AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (“Agreement”) is entered into as of July 26, 2012, among HERBALIFE INTERNATIONAL, INC., a Nevada corporation (the “Company”), HERBALIFE LTD., a Cayman Islands exempted company incorporated with limited liability (“Holdings”), HERBALIFE INTERNATIONAL LUXEMBOURG S.À.R.L., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 (“HIL”), certain Subsidiaries of the Company party hereto pursuant to Section 2.14 (each a “Designated Borrower” and, together with the Company, Holdings and HIL, the “Borrowers” and, each a “Borrower”), each Lender from time to time party hereto and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The Company, Holdings, HIL, various lenders and Bank of America, as administrative agent for such lenders, as swing line lender and as L/C Issuer, are parties to that certain Credit Agreement dated as of March 9, 2011, as the same has been amended prior to the date hereof (as so amended, the “Existing Credit Agreement”). The Borrowers have requested, and the Lenders and the Administrative Agent hereby agree, that the Existing Credit Agreement shall be amended and restated in its entirety.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree that the Existing Credit Agreement shall be amended and restated in its entirety as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

“Act” has the meaning specified in Section 10.18.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent appointed in accordance with the terms hereof.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 10.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify to the Borrowers and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

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

“Aggregate Commitments” means the Commitments of all the Lenders.

“Aggregate Revolving Commitments” means the Revolving Credit Commitments of all the Lenders.

“Agreement” means this Credit Agreement.

“Alternative Currency” means each of Euro, Pesos and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means an amount equal to the lesser of the Aggregate Commitments and \$100,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Applicable Percentage” means (a) in respect of the Term A Facility, with respect to any Term A Lender at any time, the percentage (carried out to the ninth decimal place) of the Term A Facility represented by such Term A Lender’s Term A Commitment at such time (provided that if the Term A Commitments have been terminated, the Applicable Percentage of each Term A Lender with respect to the Term A Facility shall be determined based on the Applicable Percentage of each Term A Lender most recently in effect, giving effect to any subsequent assignments) and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Revolving Percentage. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means the following percentages per annum, based upon the Consolidated Total Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(a):

Applicable Rate

Pricing Level	Consolidated Total Leverage Ratio	Commitment Fee	Eurocurrency Rate +, Peso Rate +, Letters of Credit +	Base Rate +
1	<0.50:1	0.25%	0.015	0.50%
2	≥0.50:1 but <1.00:1	0.30%	1.75%	0.75%
3	≥1.00:1 but <1.50:1	0.40%	2.00%	1.00%
4	≥1.50:1 but ≤2.00:1	0.40%	2.25%	1.25%
5	>2.00:1	0.50%	2.50%	1.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Total Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(a); provided, however, that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 5 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. The Applicable Rate in effect from the Restatement Effective Date through the date that a Compliance Certificate is required to be delivered pursuant to Section 6.02(a) for the fiscal quarter ending June 30, 2012 shall be determined based upon the Consolidated Total Leverage Ratio as set forth in the certificate delivered to the Administrative Agent on the Restatement Effective Date pursuant to Section 4 of the First Amendment.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

“Applicable Revolving Percentage” means, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Revolving Commitments represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Aggregate Revolving Commitments have expired, then the Applicable Revolving Percentage of each Revolving Credit Lender shall be determined based on the Applicable Revolving Percentage of such Lender most recently in effect, giving effect to any subsequent assignments.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Applicant Borrower” has the meaning specified in Section 2.14.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Arrangers” means, together, (a) MLPFS and J.P. Morgan Securities LLC, in their capacities as joint lead arrangers and joint book managers for the Revolving Credit Facility, and (b) MLPFS, Coöperative Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank Nederland”, New York Branch, HSBC Securities (USA) Inc. and Wells Fargo Securities, LLC, in their capacities as joint lead arrangers and joint book managers for the Term A Facility.

“Assignee Group” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by MarkitClear or other electronic platform) approved by the Administrative Agent.

“Audited Financial Statements” means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

“Availability Period” means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate”, and (c) the Eurocurrency Rate plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Committed Loan” means a Committed Loan that is a Base Rate Loan.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“Borrower” and “Borrowers” each has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Committed Borrowing or a Swing Line Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency;

(d) if such day relates to any interest rate settings as to Peso Rate Loan denominated in Pesos, means any such day on which dealings in deposits in Mexican deposits are conducted by and between banks in Mexico City, Mexico; and

(e) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

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

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Management Agreement” means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

“Cash Management Bank” means any Person that (i) at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, or both (x) at the time it entered into a Cash Management Agreement, was a “Lender” or an Affiliate of a “Lender” under the Existing Credit Agreement and (y) as of the Closing Date and/or the Restatement Effective Date is a Lender or an Affiliate of a Lender, in any such case, in its capacity as a party to such Cash Management Agreement.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (but excluding (i) any employee benefit plan of such person or its subsidiaries, (ii) any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (iii) any “nominating shareholder group” meeting the applicable eligibility requirements contained in Rule 14a-11(b) under the Exchange Act (or any successor thereto) (the “Proxy Access Rule”), to the extent the Proxy Access Rule becomes effective, including, without limitation, that such nominating shareholder group is not holding any Holdings securities with the purpose, or with the effect, of changing control of Holdings) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have

“beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”), directly or indirectly, of 35% or more of the issued shares of Holdings entitled to vote to appoint members of the board of directors or equivalent governing body of Holdings on a fully-diluted basis (and taking into account all such shares that such person or group has the right to acquire pursuant to any option right);

(b) Holdings at any time ceases to own, directly or indirectly, 100% of the Equity Interests of the Company, HIL and, except as the result of a transaction otherwise permitted hereunder, each other Guarantor; or

(c) a “change of control” or similar event, however denominated shall occur under and as defined under any indenture or other definitive document, in either case, governing Indebtedness of a Borrower or Guarantor in an aggregate principal amount outstanding of greater than \$35,000,000.

“Closing Date” means March 9, 2011.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means all of the “Collateral” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Perfection Certificate, the Security Agreement, any security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.13, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties; and for purposes of any Secured Hedge Agreement or Secured Cash Management Agreement, “Security Documents” or other analogous terms shall have the same meaning as “Collateral Documents” hereunder.

“Commitment” means a Revolving Credit Commitment or a Term A Commitment.

“Committed Borrowing” means a borrowing consisting of simultaneous Term A Loans or Revolving Credit Loans of the same Type, in the same currency and, in the case of Eurocurrency Rate Loans or Peso Rate Loans, having the same Interest Period made by each of the Lenders pursuant to Section 2.01.

“Committed Loan” means a Revolving Credit Loan or a Term A Loan.

“Committed Loan Notice” means a notice of (a) a Committed Borrowing, (b) a conversion of Committed Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans or Peso Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

“Company” has the meaning specified in the introductory paragraph hereto.

“Company Guaranty” means the Guaranty, dated as of March 9, 2011, made by the Company in favor of the Administrative Agent, the Lenders, the Cash Management Banks and the Hedge Banks, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“Consolidated Coverage Ratio” means, as of the last day of any fiscal quarter of Holdings, the ratio computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters of: (a) Consolidated EBITDA (for all such fiscal quarters) to (b) Consolidated Interest Expense (for all such fiscal quarters) plus the aggregate amount of scheduled payments of principal made by Holdings and its Subsidiaries on a consolidated basis (during all such fiscal quarters).

“Consolidated EBITDA” means, with respect to any Person for any period, Consolidated Net Income for such period, adjusted, in each case only to the extent (and in the same proportion) deducted in determining Consolidated Net Income, without duplication, by (x) adding thereto:

- (a) Consolidated Interest Expense,
- (b) provision for taxes based on income,
- (c) depreciation,
- (d) amortization (including amortization of deferred fees and the accretion of original issue discount),
- (e) all other noncash items subtracted in determining Consolidated Net Income (including any noncash charges and noncash equity based compensation expenses related to any grant of stock, stock options or other equity-based awards (including, without limitation, restricted stock units or stock appreciation rights) of such Person or any of its Subsidiaries recorded under GAAP, noncash charges related to warrants or other derivative instruments classified as equity instruments that will result in equity settlements and not cash settlements, and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for such period,
- (f) nonrecurring expenses and charges,
- (g) fees and expenses incurred in connection with the incurrence, prepayment, amendment, or refinancing of Indebtedness (including in connection with (i) the negotiation and documentation of this Agreement and the other Loan Documents and any amendments or waivers thereof and (ii) the on-going compliance with this Agreement and the other Loan Documents); and

(y) subtracting therefrom the aggregate amount of all noncash items, determined on a consolidated basis, to the extent such items were added in determining Consolidated Net Income for such period.

“Consolidated Indebtedness” means, with respect to any Person as at any date of determination, the aggregate amount of all Indebtedness (including the then outstanding principal amount of all Loans and Letters of Credit) of such Person and its consolidated Subsidiaries on a consolidated basis as determined in accordance with GAAP.

“Consolidated Interest Expense” means, with respect to any Person for any period, the total consolidated cash interest expense (including that portion attributable to Capital Lease Obligations) of such Person and its consolidated Subsidiaries for such period (calculated without regard to any limitations on the payment thereof and including commitment fees, letter-of-credit fees, and net amounts payable under any interest rate protection agreements) determined in accordance with GAAP.

“Consolidated Net Income” means, with respect to any Person for any period, the consolidated net after tax income of such Person and its consolidated Subsidiaries determined in accordance with GAAP, but excluding in any event (a) net earnings or loss of any other Person (other than a Subsidiary) in which such Person or any of its consolidated Subsidiaries has an ownership interest, except (in the case of any such net earnings) to the extent such net earnings shall have actually been received by such Person or any of its consolidated Subsidiaries in the form of cash distributions and (b) the income (or loss) of any other Person accrued prior to the date it becomes a Subsidiary of such Person or any of its consolidated Subsidiaries or is merged into or consolidated with such Person or any of its consolidated Subsidiaries or that other Person’s assets are acquired by such Person or its consolidated Subsidiaries after the Closing Date.

“Consolidated Total Leverage Ratio” means, as of the last day of any fiscal quarter of Holdings, the ratio of: (a) Consolidated Indebtedness of Holdings on such date to (b) Consolidated EBITDA of Holdings computed for the period consisting of such fiscal quarter and each of the three immediately preceding fiscal quarters.

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

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

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“Debt Rating” means, as of any date of determination, the corporate credit rating of Holdings or the Company (for the corporate enterprise taken as a whole) as determined by either S&P or Moody’s (collectively, the “Debt Ratings”).

“Debtor Relief Laws” means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurocurrency Rate Loan or Peso Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate and any Mandatory Cost) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.18(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or any Borrower, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that, for the avoidance of doubt, a Lender shall not be a Defaulting Lender solely by virtue of (i) the

ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority or (ii) in the case of a Solvent Person, the precautionary appointment of an administrator, guardian or other similar official by a Governmental Authority under or based on the Law of the country where such Person is subject to home jurisdiction supervision if applicable Law requires that such appointment not be publicly disclosed, in any such case, where such ownership, acquisition or appointment does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Person. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.18(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrowers, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Designated Borrower” has the meaning specified in the introductory paragraph hereto.

“Designated Borrower Notice” has the meaning specified in Section 2.14.

“Designated Borrower Request and Assumption Agreement” has the meaning specified in Section 2.14.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Dollar” and “\$” mean lawful money of the United States.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Domestic Subsidiary Guarantor” means a Wholly Owned Subsidiary that is (a) a Subsidiary, directly or indirectly, of the Company, (b) a Material Subsidiary and (c) a Domestic Subsidiary, but not an Excluded Domestic Subsidiary. As of the Restatement Effective Date, the

Domestic Subsidiary Guarantors are Herbalife International of America, Inc., a Nevada corporation, Herbalife International Communications, Inc., a California corporation, Herbalife International Do Brasil Ltda, a corporation dually organized in Brazil and Delaware, Herbalife Korea Co., Ltd., a corporation dually organized in Korea and Delaware, Herbalife Taiwan, Inc., a California corporation and Herbalife International of Europe, Inc., a California corporation.

“Domestic Subsidiary Guaranty” means the Guaranty, dated as of March 9, 2011, made by the Guarantors (other than the Foreign Obligors and the Company) in favor of the Administrative Agent, the Lenders the Cash Management Banks and the Hedge Banks, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Domesticated Foreign Subsidiary” means a Foreign Subsidiary which has become domesticated into the United States.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

“EMU” means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

“EMU Legislation” means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

“Equity Interests” means, with respect to any Person, all of the shares of capital stock or shares in the share capital of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock or shares in the share capital of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock or shares in the share capital of (or other ownership or profit interests in) such Person or warrants, rights or

options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Section 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Company or any ERISA Affiliate.

“Euro” and “EUR” mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

“Eurocurrency Rate” means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate (“BBA LIBOR”), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time, determined two London Banking Days prior to such date for deposits in the relevant currency being delivered in the London or other offshore interbank market for such currency for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in the relevant currency for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London or other offshore interbank market for such currency at their request at the date and time of determination.

“Eurocurrency Rate Loan” means a Committed Loan that bears interest at a rate based on the Eurocurrency Rate. Eurocurrency Rate Loans that are Revolving Credit Loans may be denominated in Dollars or in an Alternative Currency (other than Pesos). All Revolving Credit Loans denominated in an Alternative Currency (other than Pesos) must be Eurocurrency Rate Loans. Eurocurrency Rate Loans that are Term A Loans shall be denominated in Dollars.

“Event of Default” has the meaning specified in Section 8.01.

“Excluded Domestic Subsidiary” shall mean (a) any Domestic Subsidiary listed on Schedule E-1 hereto, (b) any Domestic Subsidiary that is a Subsidiary of a Foreign Subsidiary of WH Capital, or (c) any Domestic Subsidiary substantially all of the assets of which consist, directly or indirectly, of Equity Interests of Foreign Subsidiaries.

“Excluded Foreign Subsidiary” shall mean (a) any Foreign Subsidiary listed on Schedule E-1 hereto, together with any Foreign Subsidiary the territorial operations of which coincide with (and are no larger than) the territorial operations of any Foreign Subsidiary listed on Schedule E-1 and (b) any Foreign Subsidiary that is a Subsidiary of WH Capital.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof or therein) under the Laws of which such recipient is organized, conducts any trade or business or in which its principal office is located or as a result of a present or former connection between such recipient and the jurisdiction (provided that such connection is not attributable to this Agreement or any other Loan Document) or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any political subdivision thereof, or any similar tax imposed by any other jurisdiction described in clause (a) above, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender that has failed to comply with clause (A) of Section 3.01(e)(ii), (d) in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrowers under Section 10.13), any United States withholding tax that (i) is imposed on amounts payable to such Foreign Lender pursuant to the Laws in force at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Foreign Lender's failure or inability (other than as a result of a Change in

Law) to comply with clause (B) of Section 3.01(e)(ii), except to the extent that such Foreign Lender (or in the case of a Foreign Lender that becomes a Lender as a result of an assignment, its assignor) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from such Borrower with respect to such withholding tax pursuant to Section 3.01(a)(ii) or (iii), (e) any taxes imposed pursuant to Sections 1471-1474 of the Code, as may be amended, (f) any withholding tax due under the Savings Directive as transposed into Luxembourg law by the laws dated June 21, 2005 or December 23, 2005 and (g) all liabilities, penalties, and interest incurred with respect to any of the foregoing.

“Executive Order” has the meaning specified in Section 7.10(b).

“Existing Credit Agreement” has the meaning specified in the recitals to this Agreement.

“Existing Letters of Credit” means those letters of credit issued under the Existing Credit Agreement and outstanding as of the Restatement Effective Date.

“Facility” means the Term A Facility or the Revolving Credit Facility, as the context may require

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated as of June 18, 2012, among the Company, the Administrative Agent and MLPFS.

“First Amendment” means the First Amendment to Credit Agreement, dated as of July 26, 2012, among the Borrowers, the Lenders party thereto, the Administrative Agent, the Swing Line Lender and the L/C Issuer.

“Foreign Assets Control Regulations” has the meaning specified in Section 7.10(b).

“Foreign Lender” means, with respect to any Borrower, any Lender that is organized under the Laws of a jurisdiction other than that in which such Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Obligor Enforceability Exceptions” means (a) as it relates to HIL and any other Loan Party organized under the laws of Luxembourg, (i) the enforceability of the provisions hereof with respect to compound interest are subject to the provision of Section 1154 of the

Luxembourg Civil Code (and any successor provision), (ii) contractually agreed evidence may not be conclusive or binding on a Luxembourg court, (iii) the rights and obligations hereunder binding successors and assigns may not be enforceable in Luxembourg, if such successor or assign is a Luxembourg individual or Person organized under the laws of Luxembourg in the absence of an agreement from any such Luxembourg resident confirming the enforceability thereof, (iv) the severability of the provisions of this Agreement or any other Loan Document to which HIL or any other Loan Party organized under the laws of Luxembourg is party may be ineffective if a Luxembourg court considers the clause regarding illegality, invalidity or unenforceability to be a substantive or material clause, (v) the enforceability of a foreign jurisdiction clause, which may not prevent the parties thereto from initiating legal action before a Luxembourg court to the extent that summary proceedings seeking conservatory or urgent provisional measures are taken and which may retain jurisdiction with respect to assets located in Luxembourg, (vi) the enforceability of contractual provisions in this Agreement or the other Loan Documents allowing service of process against HIL and any other Loan Party organized under the laws of Luxembourg at any location other than such Loan Party's Luxembourg domicile, which may be overridden by Luxembourg statutory provisions allowing the valid service of process against such Loan Parties in accordance with applicable Luxembourg laws only at the Luxembourg domicile of such Loan Party, and (vii) the enforceability of any provision in this Agreement or the other Loan Documents providing for renunciation, before litigation arises, to the right to bring a claim in a court, and (b) any provision, whether by statute, common law, civil law, in equity or otherwise, of any jurisdiction other than Luxembourg or any State or territory of the United States having an effect similar to any of the foregoing.

“Foreign Obligors” means, collectively, Holdings, HIL and each other Loan Party that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

“Foreign Subsidiary” means any Subsidiary that is not a “United States person” as defined in Section 7701(a)(30) of the Code.

“Foreign Subsidiary Guarantor” means a Wholly Owned Subsidiary that is (a) a Material Subsidiary and (b) a Foreign Subsidiary, but not an Excluded Foreign Subsidiary. As of the Restatement Effective Date, the Foreign Subsidiary Guarantors are WH Intermediate Holdings Ltd., a Cayman Islands exempted company incorporated with limited liability, and WH Luxembourg Holdings S.à.r.l., a Luxembourg corporation.

“Foreign Subsidiary Guaranty” means the Guaranty, dated as of March 9, 2011, made by the Foreign Subsidiary Guarantors (other than HIL) in favor of the Administrative Agent, the Lenders, the Cash Management Banks and the Hedge Banks, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“Fronting Exposure” means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the

terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

“Fund” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, any (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); provided, however, that the term “Guarantee” shall not include endorsements of instruments for deposit or collection in the ordinary course of business or reasonable indemnity obligations in effect on the Closing Date or otherwise entered into in the ordinary course of business, including in connection with any acquisition or Disposition of assets or incurrence of Indebtedness or other obligations, in any case to the extent permitted under this Agreement. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by

the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guaranties” means, collectively, the Domestic Subsidiary Guaranty, the Foreign Subsidiary Guaranty, the Company Guaranty, the Holdings Guaranty and the HIL Guaranty. Subject to the terms thereof, the Guaranties are the joint and several obligations of the Guarantors party thereto.

“Guarantors” means, collectively, Holdings, the Company, HIL, each Material Subsidiary of Holdings listed on Schedule G-1 hereto and each other Wholly Owned Subsidiary that is required to Guarantee the Loans outstanding hereunder pursuant to Section 6.13 hereof.

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

“Hedge Bank” means any Person that (i) at the time it enters into a Swap Contract permitted under Article VI and VII, is a Lender or an Affiliate of a Lender, or (ii) both (x) at the time it entered into a Swap Contract permitted under Article VI and VII, was a “Lender” or an Affiliate of a “Lender” under the Existing Credit Agreement and (y) as of the Closing Date and/or the Restatement Effective Date is a Lender or an Affiliate of a Lender, in any such case, in its capacity as a party to such Swap Contract.

“HIL” has the meaning specified in the introductory paragraph hereto.

“HIL Guaranty” means the Guaranty, dated as of March 9, 2011, made by HIL in favor of the Administrative Agent, the Lenders, the Cash Management Banks and the Hedge Banks, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“HIL Sublimit” means an amount equal to \$60,000,000. The HIL Sublimit is part of, and not in addition to, the Aggregate Commitments.

“Holdings” has the meaning specified in the introductory paragraph hereto.

“Holdings Guaranty” means the Guaranty, dated as of March 9, 2011, made by Holdings in favor of the Administrative Agent, the Lenders, the Cash Management Banks and the Hedge Banks, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Immaterial Subsidiary” means (a) each Subsidiary designated as an Immaterial Subsidiary on Part (a) of Schedule 5.13, and (b) each future subsidiary designated as an Immaterial Subsidiary by Holdings in a written notice to the Administrative Agent, in each case, for so long as any such subsidiary does not (on a consolidated basis with its Subsidiaries) have assets with a book value in excess of 5% of the consolidated assets of Holdings (as reported in the most recently published consolidated balance sheet of Holdings prior to the date of

determination) or such Subsidiary's contribution to Consolidated EBITDA for the most recent four consecutive fiscal quarter period is in excess of 5%.

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money; (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments; (c) all obligations of such Person upon which interest charges are customarily paid or accrued; (d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person; (e) all obligations of such Person issued or assumed as the deferred purchase price of property (excluding trade accounts payable and other accrued liabilities incurred in the ordinary course of business); (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed; (g) all Capital Lease Obligations, purchase money obligations and Synthetic Lease Obligations of such Person; (h) all obligations of such Person in respect of Swap Contracts; provided that, the amount of Indebtedness of the type referred to in this clause (h) of any Person shall be zero unless and until such Indebtedness shall be terminated, in which case the amount of such Indebtedness shall be the termination payment due thereunder by such Person; (i) all obligations of such Person as an account party in respect of letters of credit, letters of guaranty and bankers' acceptances provided that, the amount of Indebtedness in respect of such letters of credit and letters of guaranty shall be zero if and to the extent such letters of credit and letters of guaranty are cash collateralized; and (j) all Guarantees of such Person in respect of Indebtedness or obligations of others of the kinds referred to in clauses (a) through (i) above. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent that the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 10.04(b).

"Information" has the meaning specified in Section 10.07.

"Intercreditor Provisions" has the meaning specified in Section 8.01(m).

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided, however, that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means (a) as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one day, one week or one, two, three or six months thereafter, as selected by the applicable Borrower in its Committed Loan Notice or such

other period that is twelve months or less requested by the applicable Borrower and consented to by all the Lenders and (b) as to each Peso Rate Loan, the period commencing on the date such Peso Rate Loan is disbursed or continued as a Peso Rate Loan and ending on the date twenty-eight (28) days thereafter (provided that at any time the Peso Rate shall be determined by reference to the CCP Rate in accordance with Section 3.03, the relevant Interest Period shall end on the date thirty (30) days thereafter); provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of related transactions) of assets of another Person that constitute a business unit or all or substantially all of the business of such Person. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and a Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“JPMorgan” means J.P. Morgan Securities LLC and any successor thereto.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any

Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Committed Borrowing. All L/C Borrowings shall be denominated in Dollars.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means, collectively, Bank of America in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder, together with any other Lender designated by Holdings as a “L/C Issuer” with the consent of such Lender that is reasonably acceptable to the Administrative Agent.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” means any of the Persons identified as a “Lender” on the signature pages hereto and/or the First Amendment, and any Person which may become a Lender by way of assignment in accordance with the terms hereof, together with their successors and permitted assigns, and, as the context requires, includes the Swing Line Lender.

“Lending Office” means, as to any Lender, collectively, the office, offices, branch or branches of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office, offices, branch or branches as a Lender may from time to time notify the Borrowers and the Administrative Agent.

“Letter of Credit” means any letter of credit issued hereunder and shall include the Existing Letters of Credit. A Letter of Credit may be a commercial letter of credit or a standby letter of credit. Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to \$200,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments (and is independent of, and shall not be reduced by, the Alternative Currency Sublimit).

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to a Borrower under Article II in the form of a Committed Loan or a Swing Line Loan.

“Loan Documents” means this Agreement, each Designated Borrower Request and Assumption Agreement, each Note, each Issuer Document, the Fee Letter, the Collateral Documents, the Guaranties, the First Amendment, any document which expressly amends or otherwise modifies any Loan Document and any other document that is expressly identified by its terms as a Loan Document.

“Loan Parties” means, collectively, the Company, Holdings, HIL, each Guarantor and each Designated Borrower.

“Mandatory Cost” means, with respect to any period, the percentage rate per annum determined in accordance with Schedule 1.01.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the business operations, assets, or financial condition of Holdings and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any of the Loan Documents or of the ability of the Loan Parties, taken as a whole, to perform their obligations under the Loan Documents; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Subsidiary” means each Subsidiary other than any Immaterial Subsidiary.

“Maturity Date” means the fifth anniversary of the Closing Date; provided, however, that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued and outstanding at such time, (ii) with

respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.17(a)(i)(A), (a)(i)(B) or (a)(i)(C), an amount equal to 105% of the Outstanding Amount of all LC Obligations, and (iii) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“MLPFS” means Merrill Lynch, Pierce, Fenner & Smith Incorporated and any successor thereto.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (i) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 10.01 and (ii) has been approved by the Required Lenders.

“Non-Defaulting Lender” means, at any time, each Lender that is not a Defaulting Lender at such time.

“Note” means a promissory note made by a Borrower in favor of a Lender evidencing Loans made by such Lender to such Borrower, substantially in the form of Exhibit C.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“Organization Documents” means, (a) with respect to any corporation or company, the certificate or articles of incorporation and the bylaws or memorandum and articles of association (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, or similar charges or similar levies arising from any payment made

hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

“Outstanding Amount” means (i) with respect to Committed Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Committed Loans occurring on such date; (ii) with respect to Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swing Line Loans occurring on such date; and (iii) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

“Participant” has the meaning specified in Section 10.06(d).

“Participating Member State” means each state so described in any EMU Legislation.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by the Company or any ERISA Affiliate or to which the Company or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Perfection Certificate” means the Perfection Certificate, dated as of March 9, 2011, delivered by the Company to the Administrative Agent.

“Permitted Lien” has the meaning specified in Section 7.01.

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

“Peso Rate” means, for any Interest Period with respect to a Peso Rate Loan, the rate per annum equal to the Equilibrium Interbank Interest Rate for a twenty-eight day period (“TIE”).

Rate”), as published by Banco de Mexico in the Official Daily of the Federation of Mexico on the Business Day on which such Interest Period is to commence.

“Peso Rate Loan” means a Revolving Credit Loan that bears interest at a rate based on the Peso Rate. Peso Rate Loans may only be denominated in Pesos. All Revolving Credit Loans denominated in Pesos must be Peso Rate Loans.

“Pesos” means the lawful currency of Mexico.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by the Company or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Platform” has the meaning specified in Section 6.02.

“Public Lender” has the meaning specified in Section 6.02.

“Ratings Decrease Date” has the meaning specified in Section 6.15.

“Ratings Increase Date” has the meaning specified in Section 2.16.

“Ratings Increase Period” means any period beginning on the date of occurrence of a Ratings Increase Date and ending on the next succeeding Ratings Decrease Date.

“Register” has the meaning specified in Section 10.06(c).

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person’s Affiliates.

“Removal Effective Date” has the meaning specified in Section 9.06(b).

“Replacement Lien” has the meaning specified in Section 7.01(b).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Committed Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, Lenders having more than 50% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this

definition); provided that the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders having more than 50% of the Aggregate Revolving Commitments or, if the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, Revolving Credit Lenders holding in the aggregate more than 50% of the Total Revolving Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition); provided that the Revolving Credit Commitment of, and the portion of the Total Revolving Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Lenders.

“Required Term A Lenders” means, as of any date of determination, Term A Lenders having more than 50% of the Aggregate Term A Commitments or Term A Loans; provided that the Term A Commitment held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Term A Lenders.

“Resignation Effective Date” has the meaning specified in Section 9.06(a).

“Responsible Officer” means the chief executive officer, president, director, chief financial officer, chief operating officer, secretary, assistant secretary, treasurer, assistant treasurer or controller of a Loan Party, and, in the case of each Loan Party organized in a jurisdiction other than a State or territory of the United States, a director or managing partner (or, in each case, the foreign equivalent thereof), and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing in a notice to the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restatement Effective Date” means the first date all the conditions precedent in Section 4 of the First Amendment have been satisfied or waived pursuant to the terms thereof.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Borrower or any Subsidiary thereof, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Revaluation Date” means (a) with respect to any Revolving Credit Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency or a Peso Rate Loan, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency or a Peso Rate Loan pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Revolving Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (iv) in the case of the Existing Letters of Credit, the Effective Date, and (v) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Revolving Lenders shall require.

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Credit Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, each Lender having a Revolving Credit Commitment at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(a).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

“Sanction(s)” means any international economic sanction administered or enforced by the U.S. Department of Treasury Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Savings Directive” means the Council Directive 2003/48/EC dated June 3, 2003 on taxation of savings income in the form of interest payments.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VI and VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Security Agreement” means the Security Agreement, dated as of March 9, 2011, made by the Company and the Domestic Guarantors in favor of Bank of America, as Administrative Agent and as collateral agent for the Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Securities Act” means the Securities Act of 1933, as amended.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the fair value of the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Special Notice Currency” means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 8:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such

capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

“Sublimit” means, as the case may be, the Alternative Currency Sublimit, the Letter of Credit Sublimit, the HIL Sublimit or the Swing Line Sublimit.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of Holdings.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$50,000,000 and (b) the Aggregate Revolving Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Commitments.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment); provided, however, that, the term “Synthetic Lease Obligation” shall in any event exclude any obligations that are liabilities of any such Person, as lessee, under any operating lease entered into in the ordinary course of business.

“TARGET Day” means any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Threshold Amount” means an amount equal to 5% of the consolidated assets of Holdings (as reported in the consolidated balance sheet of Holdings and its Subsidiaries most recently delivered pursuant to Section 6.01(a) or (b)).

“Term A Commitment” means, as to each Term A Lender, its obligation to make Term A Loans to the Borrower pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term A Lender’s name on Schedule 2.01 under the caption “Term A Commitment”, opposite such caption in the Assignment and Assumption pursuant to which such Term A Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. For purposes of the definition of “Required Lenders”, the amount of each Term A Lender’s Term A Commitment shall be deemed to be the Outstanding Amount of such Term A Lender’s Term A Loans.

“Term A Facility” means, at any time, the aggregate amount of the Term A Lenders’ Term A Commitments at such time.

“Term A Lender” means, at any time, each Lender having a Term A Commitment or a Term A Loan at such time.

“Term A Loan” has the meaning specified in Section 2.01(b).

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Total Revolving Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.

“Trading With the Enemy Act” has the meaning specified in Section 7.10(b).

“Type” means, with respect to a Committed Loan, its character as a Base Rate Loan, a Eurocurrency Rate Loan or Peso Rate Loan.

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Wholly Owned Subsidiary” means, as to any Person, (a) any corporation 100% of whose capital stock (other than directors’ qualifying shares or shares held by a nominee holder) is at the time owned by such Person and/or one or more Wholly Owned Subsidiaries of such person and (b) any partnership, association, joint venture, limited liability company or other entity in which such Person and/or one or more Wholly Owned Subsidiaries of such Person have a 100% Equity Interest at such time.

“WH Capital” means WH Capital Corporation, a Nevada corporation and Wholly-Owned Subsidiary of Holdings.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and

Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained by the Borrowers pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Exchange Rates; Currency Equivalents. (a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial

statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or a Peso Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, Eurocurrency Rate Loan, Peso Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

1.06 Additional Alternative Currencies. (a) The Borrowers may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of “Alternative Currency;” provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and the Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 8:00 a.m., 15 Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 8:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Committed Borrowings of Eurocurrency Rate Loans; and if the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Borrowers and such currency shall thereupon be deemed for all purposes to be

an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Borrowers. Any specified currency of an Existing Letter of Credit that is neither Dollars nor one of the Alternative Currencies specifically listed in the definition of "Alternative Currency" shall be deemed an Alternative Currency with respect to such Existing Letter of Credit only.

1.07 Change of Currency. (a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

1.08 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

1.09 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Committed Loans.

(a) Subject to the terms and conditions set forth herein, each Lender severally agrees to make revolving loans (each such loan, a “Revolving Credit Loan”) to each Borrower in Dollars or in one or more Alternative Currencies from time to time, on any Business Day during the Availability Period in an aggregate amount for all the Borrowers not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; provided, however, that after giving effect to any Committed Borrowing of Revolving Credit Loans, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender’s Revolving Credit Commitment, (iii) the aggregate Outstanding Amount of all Revolving Credit Loans made to HIL shall not exceed the HIL Sublimit and (iv) the aggregate Outstanding Amount of all Revolving Credit Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Within the limits of each Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 2.01(a), prepay under Section 2.05, and reborrow under this Section 2.01(a). Revolving Credit Loans may be Base Rate Loans, Eurocurrency Rate Loans or Peso Rate Loans, as further provided herein. The Revolving Credit Loans to each Borrower shall be the sole and several liability of that Borrower and the other Borrowers shall not be co-obligors or have any joint liability for such Loans (except to the extent that any liability is derived by the other Borrowers as Guarantors of the Obligations of that Borrower).

(b) Subject to the terms and conditions set forth herein, each Term A Lender severally agrees to make a single loan (each, a “Term A Loan”) to Holdings on the Restatement Effective Date in an amount not to exceed such Term A Lender’s Term A Commitment. The Committed Borrowing of Term A Loans on the Restatement Effective Date shall consist of Term A Loans made simultaneously by the Term A Lenders in accordance with their respective Applicable Percentage of the Term A Facility. In the event that the aggregate amount of Term A Loans requested by Holdings to be made on the Restatement Effective Date is less than the aggregate amount of the Term A Facility, the aggregate amount of the Term A Facility shall be reduced by an amount sufficient to cause (x) the Term A Facility to be equal to such aggregate amount of Term A Loans, and (y) each Term A Lender’s Term A Commitment to be an amount equal to the Term A Loans made by such Term A Lender on the Restatement Effective Date. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term A Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. The Term A Loans shall be the sole and several liability of Holdings, and the other Borrowers shall not be co-obligors or have any joint liability for, the Term A Loans (except to the extent that any liability is derived by the other Borrowers as Guarantors of the Obligations of Holdings). All Term A Loans shall be denominated in Dollars, and each Term A Lender hereby agrees and acknowledges that notwithstanding the provisions of Section 10.01 or Section 1.06, any determination made pursuant to Section 1.06 in respect of any additional Alternative

Currencies shall be made solely by the Revolving Credit Lenders and without any right of approval by any Term A Lender.

2.02 Borrowings, Conversions and Continuations of Committed Loans. (a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans and Peso Rate Loans shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than (i) 10:00 a.m. three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans denominated in Dollars, (ii) 10:00 a.m. four Business Days (or five Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies or of Peso Rate Loans, and (iii) 9:00 a.m. on the requested date of any Borrowing of Base Rate Committed Loans; provided, however, that if a Borrower wishes to request Eurocurrency Rate Loans under either Facility having an Interest Period other than one day, one week or one, two, three or six months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 10:00 a.m. (i) four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, or (ii) five Business Days (or six Business days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, whereupon the Administrative Agent shall give prompt notice to the Lenders under such Facility of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 10:00 a.m., (i) three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Dollars, or (ii) four Business Days (or five Business days in the case of a Special Notice Currency) prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, the Administrative Agent shall notify the applicable Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders under the applicable Facility. Each telephonic notice by a Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or Peso Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Committed Borrowing of or conversion to Base Rate Committed Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify (i) whether the applicable Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans or Pesos Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto, (vi) the currency of the Committed Loans to be borrowed, (vii) the identity of the applicable Borrower, and (viii) whether the applicable Borrower is requesting a Borrowing,

conversion or continuation of Revolving Credit Loans or of Term A Loans. If the applicable Borrower fails to specify a currency in a Committed Loan Notice requesting a Borrowing, then the Committed Loans so requested shall be made in Dollars. If the applicable Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if the applicable Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of Committed Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans or Peso Rate Loans in their original currency with an Interest Period of one month, in the case of Eurocurrency Rate Loans, or twenty-eight or thirty days, in the case of Peso Rate Loans (and in accordance with the definition of Interest Period). Any automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If a Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If a Committed Loan Notice fails to specify the identity of the applicable Borrower, then the Committed Loans so requested shall be made to the Borrower submitting such Committed Loan Notice; provided, however, that in the case of a failure to identify the applicable Borrower in the case of a request for a continuation of Committed Loans, such Loans shall be continued as Loans made to the Borrower to which such Loans were initially made. No Committed Loan may be converted into or continued as a Committed Loan denominated in a different currency, but instead must be prepaid in the original currency of such Committed Loan and reborrowed in the other currency.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount (and currency) of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Committed Loans denominated in a currency other than Dollars, in each case as described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 12:00 noon, in the case of any Committed Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Committed Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is to be made on the Restatement Effective Date, Section 4.01), the Administrative Agent shall make all funds so received available to the Company or the other applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the applicable Borrower; provided, however, that if, on the date the Committed Loan Notice with respect to such Borrowing of Revolving Credit Loans denominated in Dollars is given by the Company, there are L/C Borrowings outstanding, then the proceeds of such

Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and, second, shall be made available to the applicable Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan or a Peso Rate Loan may be continued or converted only on the last day of an Interest Period for such Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans (whether in Dollars or any Alternative Currency) without the consent of the Required Revolving Lenders or the Required Term A Lenders, as applicable, and the Required Revolving Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans or Peso Rate Loans denominated in an Alternative Currency be prepaid, or redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Administrative Agent shall promptly notify the Company and the applicable Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans or Peso Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding under any Facility, the Administrative Agent shall notify the Company and the Lenders under such Facility of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than ten Interest Periods in effect with respect to Committed Loans.

2.03 Letters of Credit. (a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies for the account of any Borrower or Subsidiary, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower or Subsidiary and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, (x) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Revolving Credit Lender's Applicable Revolving Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender's Applicable Revolving Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, (y) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit and (z) the Outstanding Amount of all L/C Obligations denominated in Alternative Currencies shall not exceed \$100,000,000. Each request by a Borrower for the issuance or amendment of a

Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. All Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and from and after the Restatement Effective Date shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Required Revolving Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$25,000, in the case of a commercial Letter of Credit, or \$100,000, in the case of a standby Letter of Credit;

(D) except as otherwise agreed by the Administrative Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency; or

(F) a default of any Revolving Credit Lender's obligations to fund under Section 2.03(c) exists or any Revolving Credit Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Revolving Credit Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.18(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower.

Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may require. Additionally, the applicable Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Percentage times the amount of such Letter of Credit.

(iii) If the applicable Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole and absolute discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an “Auto-Extension Letter of Credit”); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the “Non-Extension Notice Date”) in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the applicable Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the applicable Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the applicable Borrower and the Administrative Agent thereof. In the case of any reimbursement of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 3:00 p.m. on the date of any payment by the L/C Issuer under a Letter of Credit, to the extent the relevant Borrower has received notice that such payment is to be made by 8:00 a.m. on such date or, in the event such notice is received after 8:00 a.m. on such date by not later than 12:00 p.m. on the next succeeding Business Day (each such date, an “Honor Date”), the applicable Borrower shall reimburse the L/C Issuer through the

Administrative Agent in an amount equal to the Dollar Equivalent of the amount of such drawing and in Dollars. If the applicable Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Revolving Percentage thereof. In such event, the applicable Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available to the Administrative Agent for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office for Dollar-denominated payments in an amount equal to its Applicable Revolving Percentage of the Unreimbursed Amount not later than 10:00 a.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Committed Loan under the Revolving Credit Facility to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender’s payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such

Lender's Applicable Revolving Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the L/C Issuer, any Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the applicable Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), the L/C Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Committed Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from a Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Credit Lender its Applicable Revolving

Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Revolving Credit Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the applicable Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary thereof may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the applicable Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the applicable Borrower;

(v) any honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the

date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any Subsidiary thereof or in the relevant currency markets generally; or

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Borrower or any Subsidiary thereof.

Each Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. Each Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Revolving Credit Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders, the Required Revolving Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude any Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, a Borrower

may have a claim against the L/C Issuer, and the L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Borrower for, and the L/C Issuer's rights and remedies against the Borrowers shall not be impaired by, any action or inaction of the L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. Each Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Applicable Revolving Percentage, in Dollars, a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit issued for its account equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under any such Letter of Credit; provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Revolving Percentages allocable to such Letter of Credit pursuant to Section 2.18(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. Letter of Credit Fees shall be (i) due and payable on the fifth Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of

Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. Each Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee with respect to each Letter of Credit issued for its account, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the fifth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. In addition, each Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit issued for the account of such Borrower as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower that requested the issuance of such Letter of Credit shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

(l) Letter of Credit Reporting. On a monthly basis, each L/C Issuer shall deliver to the Administrative Agent a complete list of all outstanding Letters of Credit issued by such L/C Issuer.

2.04 Swing Line Loans. (a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans in Dollars (each such loan, a "Swing Line Loan") to the Company from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Percentage of the Outstanding Amount of Revolving Credit

Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Outstandings shall not exceed the Aggregate Revolving Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Revolving Credit Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Revolving Credit Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and provided, further, that the Company shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Company may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Company's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 11:00 a.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$1,000,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Company. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to 12:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 1:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Company at its office by crediting the account of the Company on the books of the Swing Line Lender in Same Day Funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Company (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Committed Loan under the Revolving Credit Facility in an amount equal to such Revolving Credit Lender's Applicable

Revolving Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the Company with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 10:00 a.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Committed Loan to the Company under the Revolving Credit Facility in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Committed Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Committed Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Committed Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Company or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Company to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Company for interest on the Swing Line Loans. Until each Lender funds its Base Rate Committed Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Company shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments. (a) Any Borrower may, upon notice from the Company to the Administrative Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by

the Administrative Agent not later than 8:00 a.m. (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Dollars, (B) four Business Days (or five, in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies or of Peso Rate Loans, and (C) on the date of prepayment of Base Rate Committed Loans; (ii) any prepayment of Eurocurrency Rate Loans denominated in Dollars shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; (iii) any prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies or of Peso Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (iv) any prepayment of Base Rate Committed Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, the Type(s) of Committed Loans to be prepaid, whether the Loans to be prepaid are Term A Loans or Revolving Credit Loans and, if Eurocurrency Rate Loans or Peso Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender under the applicable Facility of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by the Company, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; provided that not more than two times per fiscal year, such notice, if accompanied by a commitment reduction notice in accordance with Section 2.06, may state that it is conditioned upon the effectiveness of other credit facilities or the incurrence of other Indebtedness, the consummation of a particular Disposition or the occurrence of a Change of Control, in which case such notice may be revoked by the applicable Borrower(s) (by notice to the Administrative Agent on or prior to the specified prepayment date) if such condition is not satisfied. Any prepayment of a Eurocurrency Rate Loan or Peso Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each such prepayment shall be applied to the Committed Loans of the Lenders under the applicable Facility in accordance with their respective Applicable Percentages. Each prepayment of the outstanding Term A Loans pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof on a pro-rata basis.

(b) The Company may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 10:00 a.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$1,000,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Company, the Company shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If the Administrative Agent notifies the Company at any time that the Total Revolving Outstandings at such time exceed an amount equal to 110% of the Aggregate Revolving Commitments then in effect, then, within three Business Days after receipt of such notice, the Borrowers shall prepay Revolving Credit Loans and/or Swing Line Loans and/or any applicant Borrower shall Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce the Total Revolving Outstandings as of such date of payment to an amount

not to exceed 100% of the Aggregate Revolving Commitments then in effect; provided, however, that, subject to the provisions of Section 2.17(a)(ii), the Company shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Revolving Credit Loans and Swing Line Loans the Total Revolving Outstandings exceed the Aggregate Revolving Commitments then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

(d) If the Administrative Agent notifies the Company at any time that the Outstanding Amount of all Revolving Credit Loans denominated in Alternative Currencies at such time exceeds an amount equal to 110% of the Alternative Currency Sublimit then in effect, then, within three Business Days after receipt of such notice, one or more Borrowers shall prepay its Revolving Credit Loans in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

2.06 Termination or Reduction of Commitments. The Company may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Commitments, or from time to time permanently reduce the Aggregate Revolving Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) the Company shall not terminate or reduce the Aggregate Revolving Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Aggregate Revolving Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Revolving Commitments, the Alternative Currency Sublimit, the Letter of Credit Sublimit, the HIL Sublimit, the Designated Borrower Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Commitments, such Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Revolving Credit Lenders of any such notice of termination or reduction of the Aggregate Revolving Commitments. Except as set forth in clause (iv) above, the amount of any such Aggregate Revolving Commitment reduction shall not be applied to any Sublimit unless otherwise specified by the Company. Any reduction of the Aggregate Revolving Commitments shall be applied to the Commitment of each Lender according to its Applicable Revolving Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Commitments shall be paid on the effective date of such termination. Not more than two times per fiscal year, a notice to reduce the Aggregate Revolving Commitments hereunder may state that it is conditioned upon the effectiveness of other credit facilities or the incurrence of other Indebtedness, the consummation of a particular Disposition or the occurrence of a Change of Control, in which case such notice may be revoked by the applicable Borrower(s) (by notice to the Administrative Agent on or prior to the specified commitment reduction date) if such condition is not satisfied.

2.07 Repayment of Loans.

(a) Each Borrower shall repay to the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of Revolving Credit Loans made to such Borrower outstanding on such date.

(b) The Company shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date.

(c) Holdings shall repay to the Term A Lenders on the last day of each March, June, September and December, commencing on December 31, 2012, aggregate principal amounts equal to (i) 2.50% of the original principal amount of the Term A Facility after giving effect to the Borrowing of Term A Loans on the Restatement Effective Date, in the case of the payments payable on December 31, 2012, and on March 31, June 30 and September 30, 2013, (ii) 3.75% of the original principal amount of the Term A Facility after giving effect to the Borrowing of Term A Loans on the Restatement Effective Date, in the case of the payments payable on December 31, 2013, and on March 31, June 30 and September 30, 2014, and (iii) 5.00% of the original principal amount of the Term A Facility after giving effect to the Borrowing of Term A Loans on the Restatement Effective Date, in the case of the payments payable on December 31, 2014 and thereafter; provided, that such amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05(a); provided, further, that the final principal repayment installment of the Term A Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Term A Loans outstanding on such date.

2.08 Interest. Interest shall accrue on the Loans, and each Borrower shall pay interest on its Loans, as follows: (a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate plus (in the case of a Eurocurrency Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost; (ii) each Peso Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Peso Rate for such Interest Period plus the Applicable Rate; (iii) each Base Rate Committed Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iv) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or

otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (i) and (j) of Section 2.03:

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Aggregate Revolving Commitments exceed the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.18. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted towards or considered usage of the Aggregate Revolving Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the fifth Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. (i) The Borrowers shall pay to MLPFS and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrowers shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. (a) All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or, in the case of interest in respect of Revolving Credit Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of Holdings or for any other reason, Holdings or the Lenders determine that (i) the Consolidated Total Leverage Ratio as calculated by Holdings as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Total Leverage Ratio would have resulted in higher pricing for such period, each Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article VIII. The Borrowers' obligations under this paragraph shall survive for 90 days following the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt. (a) The Credit Extensions made by each Lender to each Borrower shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to each Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of each Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender to a Borrower made through the Administrative Agent, such Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note with respect to any Facility, which shall evidence such Lender's Loans to such Borrower under such Facility in addition to such accounts or records. Each Lender may attach schedules to a Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback. (a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Revolving Credit Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in Dollars and in Same Day Funds not later than 12:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Revolving Credit Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 11:00 a.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Eurocurrency Rate Loans or Peso Rate Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 9:00 a.m. on the date of such Committed Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Committed Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the

Administrative Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Committed Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Committed Loan included in such Committed Borrowing. Any payment by such Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to any Borrower as provided in the foregoing provisions of this Article II, and such funds are not made available to such Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall promptly return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Committed Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its

corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Committed Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of a Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.17 or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to the Company or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

2.14 Designated Borrowers. (a) The Company may at any time, upon not less than ten Business Days' notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), designate any Material Subsidiary of Holdings (an "Applicant Borrower") as a Designated Borrower to receive

Revolving Credit Loans hereunder by delivering to the Administrative Agent (which shall promptly deliver counterparts thereof to each Lender) a duly executed notice and agreement in substantially the form of Exhibit F (a “Designated Borrower Request and Assumption Agreement”). The parties hereto acknowledge and agree that prior to any Applicant Borrower becoming entitled to utilize the Revolving Credit Facility the Administrative Agent and the Revolving Credit Lenders shall have received such supporting resolutions, incumbency certificates, opinions of counsel and other documents or information, in form, content and scope reasonably satisfactory to the Administrative Agent, as may be required by the Administrative Agent or the Required Revolving Lenders in their sole discretion, and Notes signed by such new Borrowers to the extent any Revolving Credit Lenders so require. If the Administrative Agent and each Revolving Credit Lender agrees that an Applicant Borrower shall be entitled to receive Loans hereunder, then promptly following receipt of all such requested resolutions, incumbency certificates, opinions of counsel and other documents or information, the Administrative Agent shall send a notice in substantially the form of Exhibit G (a “Designated Borrower Notice”) to the Company and the Revolving Credit Lenders specifying the effective date upon which the Applicant Borrower shall constitute a Designated Borrower for purposes hereof, whereupon each of the Revolving Credit Lenders agrees to permit such Designated Borrower to receive Revolving Credit Loans hereunder, on the terms and conditions set forth herein, and each of the parties agrees that such Designated Borrower otherwise shall be a Borrower for all purposes of this Agreement; provided that no Committed Loan Notice or Letter of Credit Application may be submitted by or on behalf of such Designated Borrower until the date five Business Days after such effective date.

(b) The Obligations of the Company and each Designated Borrower shall be several but not joint in nature.

(c) Each Subsidiary of Holdings that becomes a “Designated Borrower” pursuant to this Section 2.14 hereby irrevocably appoints Holdings as its agent for the giving and receipt of notices. Any notice, demand, consent, acknowledgement, direction, certification or other communication delivered to the Company in accordance with the terms of this Agreement shall be deemed to have been delivered to each Designated Borrower.

(d) The Company may from time to time, upon not less than 15 Business Days’ notice from the Company to the Administrative Agent (or such shorter period as may be agreed by the Administrative Agent in its sole discretion), terminate a Designated Borrower’s status as such, provided that there are no outstanding Loans payable by such Designated Borrower, or other amounts payable by such Designated Borrower on account of any Loans made to it, as of the effective date of such termination. The Administrative Agent will promptly notify the Revolving Credit Lenders of any such termination of a Designated Borrower’s status.

2.15 Intentionally Omitted.

2.16 Release of Collateral Upon Change in Debt Rating. On or after any date (a “Ratings Increase Date”) on which the Debt Rating from S&P shall be BBB- or higher or the Debt Rating from Moody’s shall be Baa3 or higher, then, unless the Debt Rating from S&P is BB or lower or the Debt Rating from Moody’s is Ba2 or lower, upon the request of the Company or Holdings, the Administrative Agent shall promptly release all Liens securing the Collateral

and, at the Borrowers' expense, execute and deliver to each Loan Party such documents as such Loan Party may reasonably request to evidence the release of such Collateral from the assignment and security interest granted under the Collateral Documents.

2.17 Cash Collateral. (a) Certain Credit Support Events.

(i) If (A) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (B) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (C) any Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (D) there shall exist a Defaulting Lender, each Borrower shall immediately (in the case of clause (C) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in respect of its respective Obligations in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (D) above, after giving effect to Section 2.18(a)(iv) and any Cash Collateral provided by the Defaulting Lender)..

(ii) In addition, if the Administrative Agent notifies the Company at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 110% of the Letter of Credit Sublimit then in effect, then, within five Business Days after receipt of such notice, one or more Borrowers shall Cash Collateralize its or their L/C Obligations in an amount equal to the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit. The Administrative Agent may, at any time and from time to time after the initial deposit of Cash Collateral pursuant to this clause (ii), request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations.

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.17(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrowers or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. The Borrowers shall pay on demand therefor from time to time all reasonable, documented and customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement (but subject to Section 2.17(d) below), Cash Collateral provided under any of this Section 2.17 or Sections 2.03, 2.04, 2.05, 2.18 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi)) or (ii) the good faith determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.18 Defaulting Lenders. (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders", "Required Revolving Lenders", "Required Term A Lenders" and Section 10.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.17; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future

Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.17; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.18(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.18(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.09(a) for any period during which that Revolving Credit Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Revolving Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.17.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swing Line Loans

that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Commitments) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the applicable Borrower shall have otherwise notified the Administrative Agent at such time, the applicable Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause any Non-Defaulting Lender's Applicable Revolving Percentage of the Total Revolving Outstandings to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.17.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders (plus any loss, cost or expense contemplated by Section 3.05 in the case of any such purchase of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan) or take such other actions as the Administrative Agent may determine to be necessary to cause the Committed Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.18(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no

change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes. (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes (i) Any and all payments by or on account of any obligation of any Borrower hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If, however, applicable Laws require any Borrower or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by such Borrower or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Borrower or the Administrative Agent shall be required by any applicable Laws, including the Code, to withhold or deduct any Taxes, including United States Federal backup withholding and withholding taxes, from any payment, then (A) such Borrower or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Borrower or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount so withheld or deducted by it to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by such Borrower shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting or duplicating the provisions of subsection (a) above, each Borrower shall timely pay any Other Taxes attributable to (i) the Loans made to such Borrower or (ii) payments to the Lenders pursuant to the Loan Documents to the relevant Governmental Authority in accordance with applicable Laws, except regarding Luxembourg registration duties (*droits d'enregistrement*) for any Luxembourg Tax payable due to a registration, submission or filing by the Administrative Agent or a Lender of the Loan Documents where such registration, submission or filing is or was not made during the continuance of an Event of Default and required to maintain or preserve the rights of the Administrative Agent or the Lenders under the Loan Documents.

(c) Tax Indemnifications. (i) Without limiting or duplicating the provisions of subsection (a) or (b) above, each Borrower shall, and does hereby, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes imposed or

asserted on or attributable to any payment by or on account of any obligation of any Loan Party under any Loan Document (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by such Borrower or the Administrative Agent or paid by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to a Borrower by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall contain calculations setting forth such payment or liability in reasonable detail and be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the L/C Issuer shall, and does hereby, indemnify each Borrower and the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, against any and all Taxes and any and all related losses, claims, liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for such Borrower or the Administrative Agent) incurred by or asserted against such Borrower or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the L/C Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the L/C Issuer, as the case may be, to such Borrower or the Administrative Agent pursuant to subsection (e). Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by a Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by such Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders: Tax Documentation. (i) Each Lender shall deliver to the Company and to the Administrative Agent, at the time or times prescribed by applicable Laws or

when reasonably requested by the Company or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Company or the Administrative Agent, as the case may be, to determine (A) whether or not payments made by the respective Borrowers hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the respective Borrowers pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdictions.

(ii) Without limiting the generality of the foregoing, with respect to any Borrower that is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Company and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Company on behalf of such Borrower or the Administrative Agent as will enable such Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to the Company and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Company on behalf of such Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party and such other documentation as required under the Code,

(II) executed originals of Internal Revenue Service Form W-8ECI (or successor form),

(III) executed originals of Internal Revenue Service Form W-8IMY (or successor form) and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of such Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN (or successor form), or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(iii) Each Lender shall promptly (A) notify the Company and the Administrative Agent of any change in circumstances that would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that any Borrower or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender. In furtherance of the foregoing, each Lender agrees that if any form or certification previously delivered by it expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent of its legal inability to do so.

(iv) Each of the Borrowers shall promptly deliver to the Administrative Agent or any Lender, as the Administrative Agent or such Lender shall reasonably request, on or prior to the Closing Date (or such later date on which it first becomes a Borrower), and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by such Borrower, as are required to be furnished by such Lender or the Administrative Agent under such Laws in connection with any payment by the Administrative Agent or any Lender of Taxes or Other Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer

determines, in its reasonable discretion, that it has received a refund or credit of any Taxes or Other Taxes (whether paid directly to the Lender or the Administrative Agent, as applicable, or applied to reduce another tax liability) as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this Section, it shall pay to such Borrower an amount equal to such refund or credit (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Borrower, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Borrower or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurocurrency Rate (whether denominated in Dollars or an Alternative Currency) or Peso Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate or the Peso Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Company through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans or Peso Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Committed Loans to Eurocurrency Rate Loans, shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Company that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all such Eurocurrency Rate Loans or Peso Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans or Peso Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans or Peso Rate Loans, and (y) if such notice asserts the illegality of such Lender determining or charging interest

rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency) or in connection with an existing or proposed Base Rate Loan, or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, the Administrative Agent will promptly so notify the Company and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Company may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein. For purposes of determining the Peso Rate, (i) in the event the TIIE Rate ceases to be quoted, is not known at the time on which the Peso Rate must be determined, or is otherwise not available at such time for any reason, then the "Peso Rate" shall be calculated using the CETES Rate as a substitute interest rate for the TIIE rate; and (ii) in the event each of the TIIE Rate and the CETES Rate ceases to be quoted, is not known at the time on which the Peso Rate must be determined, or is otherwise not available at such time for any reason, then the "Peso Rate" shall be calculated using the CCP Rate as a substitute interest rate for the TIIE Rate and the CETES Rate.

As used in this Section, the following terms shall have the meanings set forth below:

"CETES Rate" means, for any Interest Period with respect to a Peso Rate Loan, the rate equal to the Federal Treasury Certificates Rate for a twenty-eight day period, as published by Banco de Mexico in the Official Daily of the Federation on the most recent date prior to the Business Day on which such Interest Period is to commence.

"CCP Rate" means, for any Interest Period with respect to a Peso Rate Loan, the rate equal to the cost for capturing liabilities denominated in Pesos for a thirty-day period, as published by Banco de Mexico (as the representative rate of Mexican Multiple Banking

Institutions) in the Official Daily of the Federation on the Business Day on which such Interest Period is to commence.

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans. (a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except (A) any reserve requirement contemplated by Section 3.04(e) and (B) the requirements of the Bank of England and the Financial Services Authority or the European Central Bank reflected in the Mandatory Cost, other than as set forth below) or the L/C Issuer;

(ii) subject any Lender or the L/C Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit or any Eurocurrency Rate Loan or Peso Rate Loan made by it, or change the basis of taxation of payments to such Lender or the L/C Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 or any Excluded Tax);

(iii) result in the failure of the Mandatory Cost, as calculated hereunder, to represent the cost to any Lender of complying with the requirements of the Bank of England and/or the Financial Services Authority or the European Central Bank in relation to its making, funding or maintaining Eurocurrency Rate Loans or Peso Rate Loans; or

(iv) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans or Peso Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Rate Loan or Peso Rate Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Company will pay (or cause the applicable Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the

L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Company will pay (or cause the applicable Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Company shall contain calculations setting forth such payment or liability in reasonable detail and be conclusive absent manifest error. The Company shall pay (or cause the applicable Borrower to pay) such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that no Borrower shall be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Company of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements. The Company shall pay (or cause the applicable Borrower to pay) to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency or Peso funds or deposits (currently known as "Eurocurrency liabilities" or "Peso liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan or Peso Loan (as applicable) equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans or Peso Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Company shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs

from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Company shall promptly compensate (or cause the applicable Borrower to compensate) such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Company or the applicable Borrower;

(c) any failure by any Borrower to make payment of any Loan or drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan or Peso Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Company pursuant to Section 10.13;

but excluding any loss of anticipated profits and including any foreign exchange losses and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Company shall also pay (or cause the applicable Borrower to pay) any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Company (or the applicable Borrower) to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan and each Peso Rate Loan made by it at the Peso Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders. (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or any Borrower is required to pay any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer,

such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Company hereby agrees to pay (or to cause the applicable Borrower to pay) all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Company may replace such Lender in accordance with Section 10.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension on Restatement Effective Date. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension on the Restatement Effective Date is subject to satisfaction of the conditions precedent set forth in the First Amendment.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurocurrency Rate Loans or Peso Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrowers contained in Article V and (ii) each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in clauses (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b) of Section 6.01, respectively.

(b) No Default shall exist, or would result from such proposed Credit Extension or the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) If the applicable Borrower is a Designated Borrower, then the conditions of Section 2.14 to the designation of such Borrower as a Designated Borrower shall have been met to the satisfaction of the Administrative Agent.

(e) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of Eurocurrency Rate Loans or Peso Rate Loans) submitted by the Company shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

Except as otherwise provided in Sections 5.12 and 5.18, each Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party (a) is duly organized, incorporated or formed, (b) is validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concepts are relevant under the laws of the relevant jurisdiction), (c) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (d) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c)(i) or (d), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries except for conflicts, breaches and payments that could not reasonably be expected to result in a Material Adverse Effect or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject except for conflicts, breaches and payments that could not reasonably be

expected to result in a Material Adverse Effect; (c) violate any Law except for violations that could not reasonably be expected to result in a Material Adverse Effect; or (d) result in the creation or imposition of any Lien, except Liens created under the Loan Documents.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (i) the authorizations, approvals, actions, notices and filings listed on Schedule 5.03, all of which have been duly obtained, taken, given or made and are in full force and effect, (ii) filings necessary to perfect (or, in the case of equity interests of Foreign Subsidiaries, create or enforce) Liens created under the Loan Documents, (iii) notices, filings and the payment of appropriate stamp or other duties in connection with the enforcement of this Agreement and other Loan Documents against any Foreign Obligor in their jurisdiction of organization and (iv) consents, approvals, registrations, filings or actions the failure of which to obtain or perform could not reasonably be expected to result in a Material Adverse Effect.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and (b) the Foreign Obligor Enforceability Exceptions.

5.05 Financial Statements; No Material Adverse Effect. (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheet of Holdings and its Subsidiaries dated March 31, 2012, and the related consolidated statements of income or operations and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) except as disclosed in Schedule 5.06, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens. Each Borrower and each of its respective Subsidiaries has good record and marketable title in fee simple to, or valid leasehold interests in, all real and personal property necessary or used in the ordinary conduct of its business and purported to be owned or leased by such Borrower or Subsidiary, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of the Borrowers and their Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01.

5.09 Environmental Compliance. The Borrowers and their Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof the Borrowers reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of the Borrowers and their Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Borrowers, in such amounts (after giving effect to any self-insurance), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Borrower or the applicable Subsidiary operates.

5.11 Taxes. The Loan Parties have filed all federal, state and other material tax returns and reports required to be filed, and have paid all taxes shown thereon as being due and payable, except (i) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (ii) to the extent that non-payment thereof could not reasonably be expected to result in a Material Adverse Effect. Except as otherwise disclosed on Schedule 5.11, there is no tax assessment proposed in writing against any Loan Party that would, if made, have a Material Adverse Effect. Neither any Borrower nor any Subsidiary thereof is party to any tax sharing agreement.

5.12 ERISA Compliance. (a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other Federal or state Laws except for such noncompliance which could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Company, nothing has occurred which would prevent, or cause the loss of, such qualification, except, in each case, for such determination of disqualification or loss of qualification which could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan, except, in each case, for such failure to contribute or application for waiver as could not reasonably be expected to have a Material Adverse Effect.

(b) There are no pending or, to the best knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur that could reasonably be expected to result in a Material Adverse Effect; (ii) no Pension Plan has any Unfunded Pension Liability that could reasonably be expected to result in a Material Adverse Effect; (iii) neither the Company nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA) that could reasonably be expected to result in a Material Adverse Effect; (iv) neither the Company nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan that could reasonably be expected to result in a Material Adverse Effect; and (v) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA that could reasonably be expected to result in a Material Adverse Effect.

5.13 Subsidiaries; Equity Interests. The Borrowers have no Subsidiaries on the Restatement Effective Date, other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and nonassessable and are owned, as of the Restatement Effective Date, by a Loan Party in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except Permitted Liens. As of the Restatement Effective Date, the Borrowers have no equity investments in any other corporation or entity other than (1) those specifically disclosed in Part (b) of Schedule 5.13, and (2) equity investments having an aggregate value at any time of no more than \$10,000,000.

5.14 Margin Regulations; Investment Company Act. (a) No Borrower is engaged or will engage, principally or as one of its important activities, in the business of

purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) No Borrower, no Person Controlling any Borrower and no Subsidiary of any Borrower is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. Each Borrower has disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other written information (other than projected financial information, and other forward looking information and information of a general economic or industry specific nature), when taken as a whole with all other information, when furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contained any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, Holdings represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time; and provided, further that, with respect to any financial statements not constituting projected financial information, Holdings only represents that such financial statements present fairly in all material respects the consolidated financial condition of the applicable Persons as of the dates indicated.

5.16 Compliance with Laws. Each Loan Party is in compliance with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 Taxpayer Identification Number; Other Identifying Information. The true and correct U.S. taxpayer identification number of the Company and each other Domestic Subsidiary party to a Loan Document as of the Restatement Effective Date, is set forth on Schedule 10.02. The true and correct unique identification number of each of Holdings, HIL and each other Foreign Obligor that has been issued by its jurisdiction of organization and the name of such jurisdiction, as of the Restatement Effective Date, are set forth on Schedule 5.17.

5.18 Representations as to Foreign Obligors. Each of Holdings and HIL represents and warrants to the Administrative Agent and the Lenders that:

(a) It is, and each other Person that is a Foreign Obligor as of the Restatement Effective Date is, to the extent the concept is applicable in the relevant jurisdiction, subject to civil and commercial Laws with respect to its obligations under this Agreement and the other Loan Documents to which it is a party (collectively as to each such party, the “Applicable”

Foreign Obligor Documents”), and the execution, delivery and performance by it and by each other Person that is a Foreign Obligor as of the Restatement Effective Date of the Applicable Foreign Obligor Documents constitute and will constitute, to the extent the concept is applicable in the relevant jurisdiction, private and commercial acts and not public or governmental acts. None of Holdings or HIL or any other Person that is a Foreign Obligor as of the Restatement Effective Date nor any of their respective property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of the jurisdiction in which such party is organized and existing in respect of its obligations under the Applicable Foreign Obligor Documents.

(b) The Applicable Foreign Obligor Documents are in proper legal form under the Laws of the jurisdiction in which Holdings, HIL and each other Person that is a Foreign Obligor as of the Restatement Effective Date are each incorporated or organized and existing for the enforcement thereof against such party under the Laws of such jurisdiction, and to ensure the legality, validity, enforceability, or admissibility in evidence of the Applicable Foreign Obligor Documents, subject to the exceptions on the enforceability thereof described in Section 5.04 (including, without limitation, the Foreign Obligor Enforceability Exceptions) and any requirement under local law that the applicable Foreign Obligation Document, prior to admission into any relevant foreign court, be translated into any language required by such court. It is not necessary to ensure the legality, validity, enforceability, or admissibility in evidence of the Applicable Foreign Obligor Documents that the Applicable Foreign Obligor Documents be filed, registered or recorded with, or executed or notarized before, any court or other authority in the jurisdiction in which such Foreign Obligor is organized and existing or that any registration charge or stamp or similar tax be paid on or in respect of the Applicable Foreign Obligor Documents or any other document, except for (i) any such filing, registration, recording, execution or notarization as has been made or is not required to be made until the Applicable Foreign Obligor Document or any other document is sought to be enforced, (ii) any charge or tax as has been timely paid, (iii) any stamp duty imposed by the Cayman Islands or other jurisdiction in the event that the Loan Documents are executed in, or thereafter brought to, the Cayman Islands or such other jurisdiction for enforcement or otherwise and (iv) in case of presentation of any Loan Documents, either directly or by way of reference to a Luxembourg court or *autorité constituée*, where such court or *autorité constituée* may require registration of all or part of the Loan Documents with the *Administration de l'Enregistrement et des Domaines* in Luxembourg, registration duties at a fixed rate of EUR 12 or at an *ad valorem* rate depending on the nature of the Loan Documents may become due and payable.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which Holdings, HIL or any other Person that is a Foreign Obligor as of the Restatement Effective Date is organized and existing either (i) on or by virtue of the execution or delivery of the Applicable Foreign Obligor Documents or (ii) on any payment to be made by such party pursuant to the Applicable Foreign Obligor Documents, except as has been disclosed to the Administrative Agent.

(d) The execution, delivery and performance of the Applicable Foreign Obligor Documents executed by Holdings, HIL and each other Person that is a Foreign Obligor as of the

Restatement Effective Date are, under applicable foreign exchange control regulations of the jurisdiction in which such Foreign Obligor is organized and existing, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date (provided that any notification or authorization described in clause (ii) shall be made or obtained as soon as is reasonably practicable).

5.19 Collateral Documents.

(a) The provisions of the Collateral Documents are effective under the laws of the State of New York to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable Lien (subject to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties that are party to the Collateral Documents in the Collateral described therein.

(b) Upon the filing of Financing Statements and the delivery of the certificates representing the Pledged Equity, each as contemplated hereby or by the Collateral Documents the Liens created by the Collateral Documents will be perfected, to the extent such filings or the delivery of such certificates are effective to perfect such Liens.

5.20 Solvency. The Borrowers and their Subsidiaries, together on a consolidated basis, are Solvent.

5.21 USA PATRIOT Act. Each Loan Party is in compliance, in all material respects, with the Act.

5.22 OFAC. No Loan Party, nor, to the knowledge of any Loan Party, any Related Party, (i) is currently the subject of any Sanctions, (ii) is located, organized or residing in any Designated Jurisdiction, or (iii) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan, nor the proceeds from any Loan, has been used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, any Arranger, the Administrative Agent, the L/C Issuer or the Swing Line Lender) of Sanctions.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than contingent indemnity obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, and 6.03) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) Annual. As soon as available, but in any event within 90 days after the end of each fiscal year of Holdings, (i) the consolidated balance sheet of Holdings as of the end of such fiscal year and related consolidated statements of income, cash flows and shareholders' equity for such fiscal year, and notes thereto, all prepared in a manner acceptable to the SEC and accompanied by an opinion of KPMG LLP or other independent public accountants of recognized national standing (which opinion shall not be qualified as to scope or contain any going concern or other qualification), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations, cash flows and changes in shareholders' equity of Holdings and its consolidated Subsidiaries as of the end of and for such fiscal year in accordance with GAAP; and (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal year, as compared to the previous fiscal year; and

(b) Quarterly. As soon as available, but in any event within 60 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, (i) the consolidated balance sheet of Holdings as of the end of such fiscal quarter and related consolidated statements of income and cash flows for such fiscal quarter and for the then elapsed portion of the fiscal year, in comparative form with the consolidated statements of income and cash flows for the comparable periods in the previous fiscal year, and notes thereto, all prepared in a manner acceptable to the SEC and accompanied by a certificate of a Responsible Officer stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Holdings and its consolidated Subsidiaries as of the date and for the periods specified in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes; and (ii) a management's discussion and analysis of the financial condition and results of operations for such fiscal quarter and the then elapsed portion of the fiscal year, as compared to the comparable periods in the previous fiscal year.

6.02 Certificates; Other Information. Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent:

(a) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings;

(b) promptly after any request by the Administrative Agent, copies of any management letters submitted to the board of directors (or the audit committee of the board of directors) of any Borrower by independent accountants in connection with the accounts or books of such Borrower or any Subsidiary thereof, or any audit of any of them;

(c) at least once in any calendar year, and in any event within 60 days of the date the below referenced budget or strategic plan, as the case may be, is approved by the board of directors of Holdings, (i) an annual budget of Holdings and its Subsidiaries in form reasonably satisfactory to the Administrative Agent prepared by Holdings for each fiscal month of the fiscal year covered by such budget prepared in detail and (ii) a strategic plan prepared in summary form; and, in the case of the annual budget, such budget shall be prepared in detail with appropriate presentation and discussion of the principal assumptions upon which such budget is based, accompanied by the statement of a Responsible Officer of Holdings to the effect that the budget is a reasonable estimate for the period covered thereby (it being understood that actual results may vary significantly from any such projected or forecasted results);

(d) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of public debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture or similar document governing such public debt securities and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(e) promptly, and in any event within five Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof; and

(f) promptly, such additional information regarding the business, financial or corporate affairs of any Borrower or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent (or any Lender through the Administrative Agent) may from time to time reasonably request.

Documents required to be delivered pursuant to Section 6.01(a) or (b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which any Borrower posts such documents, or provides a link thereto on such Borrower's website on the Internet at the website address listed on Schedule 10.02; or (ii) on which such documents are posted on such Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) each Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests such Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the applicable Borrower shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Notwithstanding anything contained herein, in

every instance Holdings or the Company shall be required to provide paper copies of the Compliance Certificates required by Section 6.02(b) to the Administrative Agent. Except for such Compliance Certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrowers with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of such Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to any of the Borrowers or their respective Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Borrower hereby agrees that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrowers shall be deemed to have authorized the Administrative Agent, the Arrangers, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrowers or their respective securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

6.03 Notices. Promptly notify the Administrative Agent:

- (a) of the occurrence of any Default (and the Administrative Agent will notify each Lender upon its receipt of such notice);
- (b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect;
- (c) of the occurrence of any ERISA Event; and
- (d) of any material change in accounting policies or financial reporting practices by any Borrower or any Subsidiary thereof, other than pursuant to or in connection with the implementation of or transition to International Financial Reporting Standards, including any determination by Holdings referred to in Section 2.10(b); and
- (e) of any announcement by Moody's or S&P of any change in a Debt Rating.

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of Holdings setting forth details of the occurrence referred to therein and stating what action Holdings has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable all obligations and liabilities to the extent the failure to do so could reasonably be expected to result in a Material Adverse Effect, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless (i) the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Loan Party or (ii) the non-payment thereof could not reasonably be expected to result in a Material Adverse Effect; (b) all lawful claims which, if unpaid, would by law become a Lien (other than a Permitted Lien) upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any grace periods or subordination provisions contained in any instrument or agreement evidencing such Indebtedness, if the non-payment thereof could reasonably be expected to result in a Material Adverse Effect.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; provided, that, in any event, (i) each of the Company and HIL maintain its legal existing and good standing under the Laws of the jurisdiction in which such Borrower is organized as of the Restatement Effective Date and (ii) Holdings maintains its legal existing and good standing under the Laws of the jurisdiction in which Holdings is organized as of the Restatement Effective Date or any other jurisdiction so long as (x) the change to such jurisdiction would not have an adverse effect on the Lenders and (y) the change to such jurisdiction shall have been approved by the Administrative Agent (such approval not to be unreasonably withheld); (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, copyrights, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted and except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (b) make all necessary repairs thereto and renewals and replacements thereof, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Borrowers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving

effect to any self-insurance) as are customarily carried under similar circumstances by such other Persons.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP (or the foreign equivalent thereof) consistently applied shall be made of all financial transactions and matters involving the assets and business of such Borrowers or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and upon reasonable advance notice (no more frequently than twice during any fiscal year of Holdings and at the sole cost and expense of the Lenders unless a Default or Event of Default shall have occurred and be continuing); provided, however, that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrowers at any time during normal business hours and without advance notice.

6.11 Use of Proceeds. Use the proceeds of (a) the Term A Loans made on the Restatement Effective Date to repay Revolving Credit Loans outstanding on such date and to pay accrued interest and fees, costs and expenses incurred in connection with this Agreement and the Amendment (provided, that, to the extent the proceeds of the Term A Loans exceed the aggregate outstanding amount of the Revolving Credit Loans and such fees, costs and expenses, such proceeds shall be used for general corporate or other purposes) and (b) all other Credit Extensions for general corporate or other purposes, in each case not in contravention of any Law or of any Loan Document.

6.12 Approvals and Authorizations. Maintain all authorizations, consents, approvals and licenses from, exemptions of, and filings and registrations with, each Governmental Authority of the jurisdiction in which each Foreign Obligor is organized and existing, and all approvals and consents of each other Person in such jurisdiction, in each case that are required in connection with the Loan Documents, except to the extent where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.13 Additional Guarantors; Additional Collateral.

(a) Subject to this Section 6.13 and except during a Ratings Increase Period or to the extent the Administrative Agent and the Borrowers mutually agree that any of the following is not commercially reasonable (taking into account the expense of obtaining the same, the ability of the Company or any Domestic Subsidiary thereof that is a Loan Party to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law), with respect to any assets acquired after the Restatement Effective Date by the Company or any Domestic Subsidiary thereof that is a Loan Party that are intended to be subject to the Lien created by any of the Collateral Documents but that are not so subject, and with respect to any assets held by the Company or any Domestic Subsidiary thereof that is a Loan Party on the Restatement Effective Date not made subject to a Lien created by any of the Collateral Documents but of a type intended to be subject to the Lien created by the applicable Collateral Documents (but, in any event, excluding any assets described in Section 6.13(b)), promptly (and in any event within 60 days after the acquisition thereof or upon the Administrative Agent's request): (i) execute and deliver to the Administrative Agent such amendments or supplements to the relevant Collateral Documents or such other documents as the Administrative Agent shall deem necessary or advisable to grant to the Administrative Agent, for its benefit and for the benefit of the other Secured Parties, a Lien on such properties or assets, subject to no Liens other than Permitted Liens and (ii) file or cause to be filed financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent and as necessary to cause such Lien to be duly perfected to the extent required by such Security Document in accordance with all applicable requirements of Law. The Company or any such Domestic Subsidiary that is a Loan Party shall otherwise take such actions and execute and/or deliver to the Collateral Agent such documents as the Administrative Agent shall require to confirm the validity of the Lien of Collateral Documents against such after-acquired properties or assets, and such assets held on the Restatement Effective Date not made subject to a Lien created by any of the Collateral Documents.

(b) To the extent the Administrative Agent and the Borrowers mutually agree that any of the following is commercially reasonable (taking into account the expense (including taxes) of obtaining the same, the ability of the Borrowers or the relevant Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law):

(i) with respect to any person that becomes, after the Restatement Effective Date, a Domestic Subsidiary Guarantor, promptly, and in any event no later than 60 days after each such person becomes a Domestic Subsidiary Guarantor, shall cause (A) such Domestic Subsidiary Guarantor to become a Guarantor by executing a joinder instrument to the Domestic Subsidiary Guaranty and, except during a Ratings Increase Period, a "Pledgor" under the Security Agreement by executing a joinder instrument thereto, each in form and substance reasonably satisfactory to the Administrative Agent and (B) except during a Ratings Increase Period, the holder of the Equity Interests of such Domestic Subsidiary Guarantor, and the Domestic Subsidiary Guarantor, to deliver to the Administrative Agent the certificates (if any) representing the Equity Interests of the Domestic Subsidiary Guarantor and any certificated Equity Interests constituting Collateral then held by the Domestic Subsidiary Guarantor

(provided, that, in no event shall the any certificated Equity Interests be required to be pledged if such pledge is illegal under applicable law and no reasonable alternative structure can be devised having substantially the same effect as such pledge that would not be illegal under applicable law), together with undated stock powers executed and delivered in blank by a duly authorized officer of the relevant parent company, as the case may be; and

(ii) with respect to any person that becomes, after the Restatement Effective Date, a Foreign Subsidiary Guarantor, promptly, and in any event no later than 60 days after each such person becomes a Foreign Subsidiary Guarantor shall cause such Foreign Subsidiary Guarantor to become a Guarantor by executing (A) a joinder instrument to the Foreign Subsidiary Guaranty, in form and substance reasonably satisfactory to the Administrative Agent; and, in connection therewith, any such joinder instrument may contain such modifications to the Foreign Subsidiary Guaranty as the Administrative Agent (in consultation with the Borrowers) shall deem necessary or appropriate to take into account any legal restrictions of the jurisdiction in which such Foreign Subsidiary Guarantor is organized, provided such modifications do not expand the scope of debt guaranteed pursuant to the Foreign Subsidiary Guaranty.

(c) Notwithstanding anything to the contrary contained herein, 66% of the Equity Interests of any Foreign Subsidiary (and 100% of the Equity Interests of any Domesticated Foreign Subsidiary) (exclusive, however, of any Immaterial Subsidiary) shall be subject to a Lien or be required to be pledged under the applicable Loan Document (except to the extent the Administrative Agent and the Borrowers mutually agree that such Lien or pledge is not commercially reasonable (taking into account the expense, including taxes, of obtaining the same, the ability of the Company or such Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law)); and, in any event, no Loan Party shall be required to deliver any supplemental Loan Document to give effect to this clause (c) that is governed by any law other than the laws of the United States or any political subdivision of any thereof.

(d) At any time upon request of the Administrative Agent but except during a Ratings Increase Period, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or (as applicable) in perfecting and preserving the Liens of, such guaranties, Security Agreement Supplements, intellectual property agreement supplements and other Collateral Documents; provided, that, notwithstanding any other provision of the Loan Documents, no Loan Party shall be required to (x) take any action to perfect the Liens created under the Security Agreement, other than the filing of appropriate UCC1 financing statements and the delivery of certificated securities (if any) evidencing the Equity Interests of a Subsidiary thereof, the equity securities of which comprise an item of the Collateral (subject however to the preceding clause (c) and any limitations under the Security Agreement) or (y) otherwise execute and deliver any instrument or agreement governed by the laws of any jurisdiction other than the United States or a political subdivision thereof.

6.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or

recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to carry out more effectively the purposes of the Loan Documents.

6.15 Ratings Decrease Following Release of Collateral. On or after any date (a “Ratings Decrease Date”) occurring after the release of any Liens pursuant to Section 2.16 and on which the Debt Rating from S&P shall be BB+ or lower and the Debt Rating from Moody’s shall be Ba1 or lower, the Company shall

(a) within 30 days after such Ratings Decrease Date, furnish to the Administrative Agent a duly completed Perfection Certificate duly executed and delivered by the Company and each Domestic Subsidiary Guarantor then in existence,

(b) within 60 days after such Ratings Decrease Date, the Company shall, and (to the extent the Administrative Agent and the Borrowers mutually agree that any of the following is commercially reasonable (taking into account the expense (including taxes) of obtaining the same, the ability of the Borrowers or the relevant Subsidiary to obtain any necessary approvals or consents required to be obtained under applicable law in connection therewith, and the effectiveness and enforceability thereof under applicable law)) shall cause the Company and each Domestic Subsidiary Guarantor, to the extent it has not already done so, to duly execute and deliver to the Administrative Agent a Security Agreement and other instruments of the type specified in Section 4.01(a)(iii),

(c) within 60 days after such Ratings Decrease Date, deliver to the Administrative Agent documents of the types referred to in clauses (iv) and (v) of Section 4.01(a), all in form, content and scope reasonably satisfactory to the Administrative Agent, and

(d) within 60 days after such Ratings Decrease Date, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion, addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (b), (c) and (d) above.

The foregoing provisions of Section 6.15 to the contrary notwithstanding, no Loan Party that is (or proposed to be) a party to the Security Agreement shall be required to (x) take any action to perfect any Liens created under the Security Agreement, other than the filing of appropriate UCC1 financing statements and the delivery of certificated securities (if any) evidencing the Equity Interests of any Subsidiary thereof, the equity securities of which comprise an item of the Collateral (subject however to the limitations set forth herein and in the Security Agreement), or (y) otherwise execute and deliver any instrument or agreement governed by the laws of any jurisdiction other than the United States or a political subdivision thereof.

**ARTICLE VII.
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than contingent indemnity obligations) shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall not, nor shall they permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (the “Permitted Liens”):

(a) Liens pursuant to any Loan Document;

(b) Liens existing on the date hereof, including Liens replacing such Liens (“Replacement Liens”); provided that, (i) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase, except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with the refinancing thereof and by an amount equal to any existing commitments unutilized thereunder; and (ii) such Liens do not encumber any property other than the property subject thereto on the Closing Date and (iii) any Lien securing Indebtedness in excess of (x) \$5,000,000 individually, or (y) \$20,000,000 in the aggregate (when taken together with all other Liens outstanding in reliance on this clause (b) that are not set forth on Schedule 7.01) shall only be permitted in reliance on this clause (b) to the extent that such Lien is listed on Schedule 7.01;

(c) Liens for Taxes, provided, that, in the case of Taxes of a Loan Party such Taxes are not yet due and payable or delinquent or constitute Liens for Taxes (including in respect of deposits made in respect of such Taxes) that are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings (or orders entered in connection with such proceedings) have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien;

(d) Liens in respect of property of a Loan Party or any Subsidiary thereof imposed by law that were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, materialmen’s, landlords’, workmen’s, suppliers’, repairmen’s and mechanics’ Liens and other similar Liens arising in the ordinary course of business;

(e) Liens (other than any Lien imposed by ERISA or Section 401(a)(29) or 412(n) or the Tax Code) (i) imposed by law or deposits made in connection therewith in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other types of social security; (ii) incurred in the ordinary course of business to secure the performance of tenders, statutory obligations (other than excise taxes), surety, stay, customs and appeal bonds, statutory bonds, bids, leases, government contracts, trade contracts, performance and return of money bonds and other similar obligations (including obligations imposed by the applicable laws of foreign jurisdictions and exclusive of obligations for the payment of borrowed money); or (iii) arising by virtue of deposits made in the ordinary course of business to secure

liability for premiums to insurance carriers; provided that, with respect to clauses (i), (ii) and (iii) above such Liens are set amounts not yet due and payable or delinquent or, to the extent such amounts are so due and payable, such amounts are being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP, which proceedings for orders entered in connection with such proceedings have the effect of preventing the forfeiture or sale of the property or assets subject to any such Lien;

(f) easements, rights-of-way, restrictions (including zoning restrictions), covenants, encroachments, protrusions and other similar charges or encumbrances, and minor title deficiencies on or with respect to any real property, in each case whether now or hereafter in existence, not (i) securing Indebtedness and (ii) individually or in the aggregate materially interfering with the conduct of the business of Holdings or its Subsidiaries at such real property;

(g) Liens arising out of judgments or awards not resulting in an Event of Default (including notices of *lis pendens* and associated rights) and in respect of which judgments or awards the applicable Loan Party or other Subsidiary shall in good faith be prosecuting an appeal or proceedings for review in respect of which there shall be secured a subsisting stay of execution pending such appeal or proceedings;

(h) Liens securing Indebtedness permitted under Section 7.03(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost of the property being acquired on the date of acquisition;

(i) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by any Borrower or any Subsidiary thereof in the ordinary course of business in accordance with the past practices of such Borrower or Subsidiary;

(j) bankers' Liens, rights of set-off and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by a Borrower or any Subsidiary thereof, in each case granted (or otherwise arising) in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements (including any Cash Management Agreement), including those involving pooled accounts and netting arrangements; provided that, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness;

(k) Liens on assets of a Person (and its Subsidiaries) existing at the time such Person or asset is acquired or merged with or into or consolidated with a Borrower or any of its Subsidiaries (and not created in anticipation or contemplation thereof), together with any Replacement Liens thereof; provided that, such Liens do not extend to assets not subject to such Liens at the time of acquisition (other than improvements thereon) and, in respect of a Replacement Lien, such Liens do not encumber any property other than the property subject thereto on the date such Person or asset is acquired or merged with or into or consolidated with a Borrower or any of its Subsidiaries;

(l) licenses of intellectual property (i) granted by any Borrower or any of its Subsidiaries in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such Borrower or such Subsidiary and (ii) between or among any Borrower and/or any Subsidiaries thereof;

(m) cash deposits required to secure obligations in respect of letters of credit and bank Guarantees (i) actually outstanding on the Restatement Effective Date and listed on Schedule 7.03, (ii) issued in respect of refinancings or renewals permitted under Section 7.03(b) or (iii) issued in the ordinary course of business in an aggregate amount not to exceed \$150,000,000 at any time;

(n) restrictions on transfers of securities imposed by applicable securities laws;

(o) Liens in favor of the financial institutions providing cash pooling services to the Borrowers and/or their Subsidiaries; provided, that such Liens are granted solely in the bank accounts that are the subject of such pooling arrangements and the obligations secured thereby are limited to the obligations arising under the pooling arrangements, including, without limitation, for the fees and costs of the financial institutions providing such services;

(p) Liens securing Indebtedness permitted under Section 7.03(h) in an aggregate amount not to exceed \$150,000,000 at any time;

(q) Liens on Collateral (for so long as such Collateral is subject to the Lien of the Collateral Documents) securing Indebtedness incurred pursuant to Section 7.03(i) in an aggregate amount not to exceed \$150,000,000, so long as (i) such Indebtedness shall be secured on an equal and ratable basis with the Liens securing the Obligations pursuant to one or more intercreditor agreements reasonably satisfactory to the Administrative Agent, (ii) such Indebtedness has a stated maturity date not earlier than the Maturity Date and (iii) the documentation governing such Indebtedness contains maintenance financial covenants no more restrictive than those contained in this Agreement;

(r) other Liens on Collateral (for so long as such Collateral is subject to the Lien of the Collateral Documents) securing Indebtedness incurred pursuant to Section 7.03(j) so long as (i) such Liens are expressly junior to the Liens securing the Obligations pursuant to one or more intercreditor agreements reasonably satisfactory to the Administrative Agent and (ii) the Indebtedness secured thereby (x) is subordinated in right of payment to the prior payment in full of the Obligations pursuant to the intercreditor agreement or agreements referred to in clause (i) above, (y) has a stated maturity date after (and no scheduled amortization prior to) the date six months after the Maturity Date and (z) is governed by documentation containing terms and provisions no more restrictive than those contained in this Agreement and otherwise reasonably acceptable to the Administrative Agent;

(s) Liens on Indebtedness incurred pursuant to Section 7.03(g);

(t) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(u) Any interest or title of a lessor, sublessor, licensor or sublicensor by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by Holdings or any Subsidiary as tenant, subtenant, licensee or sublicense in the ordinary course of business, including, without limitation, any assignments of insurance or condemnation proceeds provided to landlords (or their mortgagees) pursuant to the terms of any lease and Liens and rights reserved in any lease for rent or for compliance with the terms of such lease;

(v) Liens securing reimbursement obligations in respect of documentary letters of credit or bankers acceptances, provided, that such Liens attach only to the documents and goods covered thereby and the proceeds thereof;

(w) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(x) Liens on (i) any cash earnest money deposits made by Holdings or any Subsidiary in connection with any letter of intent or purchase agreement permitted hereunder and (ii) cash relating to escrows established for an adjustment in purchase price or liabilities or indemnities for Dispositions, to the extent the relevant Disposition is permitted hereby;

(y) Liens arising in connection with the filing of Uniform Commercial Code (or equivalent) financing statements solely as a precautionary measure in connection with operating leases or the consignment of goods;

(z) Liens in favor of a trustee in an indenture relating to any Indebtedness to the extent such Liens secure only customary compensation and reimbursement obligations of such trustee;

(aa) Liens securing cash collateral in an aggregate amount not to exceed \$10,000,000 at any time granted to a financial counterparty to a Swap Contract that is not a Hedge Bank in connection with the incurrence of Indebtedness incurred pursuant to Section 7.03(e); and

(bb) Liens securing Indebtedness and other obligations in an amount not to exceed \$25,000,000 at any one time outstanding.

7.02 Investments. Make any Investments, except:

(a) Investments held by a Borrower or any Subsidiary thereof in the form of cash equivalents or short-term marketable debt securities;

(b) Investments arising in connection with the purchase and sale of marketable securities to facilitate the repatriation of earnings by Foreign Subsidiaries and Investments arising in connection with the payment of intercompany and other obligations incurred in the ordinary course of business by Foreign Obligors;

(c) advances to officers, directors and employees of the Borrowers and their Subsidiaries, for travel, entertainment, relocation and analogous ordinary business purposes, in each case consistent with past practices;

(d) Investments of any Borrower in any other Borrower or in any Wholly-Owned Subsidiary and Investments of any Wholly-Owned Subsidiary in any Borrower or in another Wholly-Owned Subsidiary;

(e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business; Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss; Investments received in satisfaction of judgments, foreclosure of Liens or settlement of Indebtedness or other obligations;

(f) Guarantees permitted by Section 7.03;

(g) Investments arising in connection with Swap Contracts permitted hereunder;

(h) Investments in respect of prepaid expenses, negotiable instruments held for collection or lease, utility, workers' compensation, performance and similar deposits provided to third parties in the ordinary course of business;

(i) Investments constituting non-cash consideration received in connection with Dispositions permitted by Section 7.05;

(j) other Investments so long as (i) both before and immediately after giving pro forma effect to such Investment (x) no Default shall then exist and (y) the Loan Parties shall be in compliance with Section 7.11 as of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 hereof and (ii) in the case of any purchase or other acquisition of capital stock or other equity securities of another Person or any purchase or other acquisition (in one transaction or a series of related transactions) of the assets of another Person that constitute a business unit or all or substantially all of the business of such Person, (x) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same (or reasonably related to) lines of business as one or more of the principal businesses of the Borrowers and their Subsidiaries in the ordinary course and (y) any such newly-created or acquired Wholly-Owned Subsidiary shall comply with the applicable requirements of Section 6.13.

7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the date hereof and any refinancings, refundings, renewals or extensions thereof; provided that (i) the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to amortization, maturity date, collateral (if any) and subordination (if any) of any such refinancing, refunding, renewing or

extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and (iii) any Indebtedness that is in excess of (x) \$5,000,000 individually, or (y) \$20,000,000 in the aggregate (when taken together with all other Indebtedness outstanding in reliance on this clause (b) that are not set forth on Schedule 7.03) shall only be permitted in reliance on this clause (b) to the extent that such Lien is listed on Schedule 7.03;

(c) Indebtedness of any Borrower to any other Borrower or any Wholly-Owned Subsidiary and Indebtedness of any Wholly-Owned Subsidiary to any Borrower or other Wholly-Owned Subsidiary;

(d) Guarantees of any Borrower or any Subsidiary thereof in respect of Indebtedness otherwise permitted hereunder of a Borrower or any Wholly-Owned Subsidiary;

(e) obligations (contingent or otherwise) of any Borrower or any Subsidiary thereof existing or arising under any Swap Contract (together with any Guarantees thereof), provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(f) Indebtedness in respect of Capital Lease Obligations, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(h); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$150,000,000, plus such additional amounts as are hereafter required in accordance with changes imposed by GAAP to be reflected as a Capital Lease Obligation;

(g) Indebtedness of Foreign Subsidiaries other than a Loan Party and incurred for working capital purposes;

(h) Indebtedness of a Borrower or any Subsidiary thereof incurred in respect of bank guarantees, letters of credit or similar instruments to support local regulatory, solvency, consumer requirements and tax disputes not to exceed \$150,000,000 in the aggregate at any time outstanding;

(i) Cash Management Obligations and other Indebtedness in respect of netting services, cash pooling arrangements, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business, and any Guarantees thereof; and

(j) other Indebtedness so long as both before and immediately after giving pro forma effect to the incurrence of such Indebtedness (i) no Default shall then exist and (ii) the Loan Parties shall be in compliance with Section 7.11 as of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 hereof.

7.04 Fundamental Changes. Subject to Section 6.05(a)(ii), merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that:

(a) any Subsidiary may merge with (i) a Borrower, provided that such Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that except as set forth in clause (c) below, when any Guarantor is merging with another Subsidiary, the continuing or surviving Person shall be a Guarantor or shall become a Guarantor within the timeframe set forth in Section 6.13;

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to a Borrower or to another Subsidiary; provided that except as set forth in clause (c) below, if the transferor in such a transaction is a Guarantor, then the transferee must either be a Borrower or a Guarantor; and

(c) subject to Section 6.13, any Subsidiary may merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions, including pursuant to an insolvency or other proceeding intended to adjudicate or preserve the rights of creditors) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, in each case so long as both before and immediately after giving pro forma effect to such transaction or series of transactions (i) no Default shall then exist and (ii) the Loan Parties shall be in compliance with Section 7.11 as of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 hereof.

7.05 Dispositions. Make any Disposition, except:

(a) Dispositions of obsolete or worn out or surplus property, or otherwise no longer used or useful, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by a Borrower or any Subsidiary to another Borrower or to a Wholly-Owned Subsidiary;

(e) Dispositions permitted by Section 7.04, or otherwise affected pursuant to an Investment pursuant to Section 7.02, and the granting of Liens permitted under Section 7.01;

(f) Dispositions of Subsidiaries, or their property, that are not Loan Parties so long as both before and immediately after giving pro forma effect to any such Disposition (i) no Default shall then exist and (ii) the Loan Parties shall be in compliance with Section 7.11 as of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01 hereof; and

(g) Dispositions by the Borrowers and their Subsidiaries not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition and (ii) the aggregate book value of all property Disposed of in reliance on this clause (g) in any fiscal year shall not exceed \$75,000,000.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to the Loan Parties and any other Person that owns an Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

(b) each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) Holdings and each Subsidiary may purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of other common Equity Interests; and

(d) Holdings may (i) declare or pay cash dividends to its shareholders and (ii) purchase, redeem or otherwise acquire for cash Equity Interests issued by it so long as both before and immediately after giving pro forma effect to such transaction or series of related transactions (i) no Default shall then exist, (ii) the Consolidated Total Leverage Ratio as at the end of the fiscal quarter of Holdings most recently ended for which financial statements have been delivered pursuant to Section 6.01 shall not exceed 2.25 to 1.00 and (iii) the Loan Parties shall be in compliance with Section 7.11(a) as of the end of the fiscal quarter most recently ended for which financial statements have been delivered pursuant to Section 6.01.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Borrowers and their Subsidiaries on the date hereof or any business substantially related or incidental thereto or any reasonable extension thereof.

7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of the Borrowers, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to such Borrower or such Subsidiary as could reasonably be obtainable by such Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, provided that the foregoing restriction shall not apply to (i) transactions between and among the Borrowers and their Subsidiaries, (ii) Restricted Payments permitted by Section 7.06, (iii) Dispositions permitted by Section 7.05, (iv)

Investments permitted by Section 7.02 and (v) customary compensation and indemnification may be paid to officers, directors, employees and distributors.

7.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Borrower or any Subsidiary thereof to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to any Borrower or any Guarantor, (ii) of any Borrower or any Subsidiary thereof to Guarantee the Indebtedness of any Borrower or (iii) of any Borrower or any Subsidiary thereof that is party to the Security Agreement to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.03(f) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) except as contemplated by Section 7.01(q) and (r), requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; provided, that this Section 7.09 shall not prohibit (I) any such limitation or requirement pursuant to the terms of Indebtedness (x) of Foreign Subsidiaries, (y) constituting high yield debt instruments and (z) outstanding under a credit agreement, loan agreement, indenture or other documentation containing terms and provisions not materially less favorable to the applicable obligor than the terms of this Agreement, in each case so long as such Indebtedness is permitted under Section 7.03 or (II) (a) any Permitted Lien or any document or instrument governing any Permitted Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien, (b) customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under Section 7.05 pending the consummation of such sale, (c) agreements restricting assignments, subletting or other transfers contained in leases, licenses, joint venture agreements and similar agreements entered into in the ordinary course of business, in each case relating solely to the assets subject to such lease or license or assets relating solely to the such joint venture agreement, (d) contracts entered into in the ordinary course of business restricting the assignment of such contracts, and (e) any such limitations or requirements that are binding on a Person at the time such Person first became a Subsidiary of Holdings, so long as all such limitations and requirements were not entered into in contemplation of such Person becoming a Subsidiary of Holdings, together with any replacement agreement thereof so long as the terms thereof are not materially less favorable to such Subsidiary.

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately,

(a) (i) to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose in any case in violation of Regulation T, U or X of the FRB or (ii) for any other purpose other than (x) for working capital and other lawful corporate purposes and (y) to repay obligations outstanding under the Existing Credit Agreement;

(b) knowingly in violation of the Trading With the Enemy Act (50 U.S.C. § 1 et seq., as amended) (the "Trading With the Enemy Act") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the

“Foreign Assets Control Regulations”) or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (i) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the “Executive Order”) and (ii) the Act. Furthermore, none of the Borrowers or their Subsidiaries (x) shall become a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (y) knowingly engages or will engage in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative in any material respects of any such order; or

(c) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, knowingly in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

7.11 Financial Covenants.

(a) **Consolidated Coverage Ratio.** Permit the Consolidated Coverage Ratio as of the end of any fiscal quarter of Holdings to be less than 4.00 to 1.00.

(b) **Consolidated Total Leverage Ratio.** Permit the Consolidated Total Leverage Ratio as of the end of any fiscal quarter of Holdings to be greater than 2.50 to 1.00.

7.12 Capital Expenditures. Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations) unless both before and immediately after giving pro forma effect to such expenditure (i) no Default shall then exist and (ii) the Loan Parties shall be in compliance with Section 7.11 as of the most recent fiscal quarter for which financial statements have been delivered pursuant to Section 6.01.

7.13 Accounting Changes. Make any material change in accounting policies or reporting practices, except as required or permitted by GAAP.

7.14 Sanctions. Permit any Loan or the proceeds of any Loan, directly or indirectly, (i) to be lent, contributed or otherwise made available to fund any activity or business in any Designated Jurisdiction; (ii) to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions; or (iii) in any other manner that will result in any violation by any Person (including any Lender, Arranger, Administrative Agent, L/C Issuer or Swing Line Lender) of any Sanctions.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

- (a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, or (ii) within five Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or
- (b) Specific Covenants. Any Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), 6.05 (but solely with respect to the continued existence of each Borrower), or 6.11 or Article VII; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (i) actual knowledge by any Loan Party or (ii) receipt by Holdings of written notice thereof from the Administrative Agent or Lenders constituting Required Lenders; provided, however, that with respect to any default in the performance of the obligations under Section 5.09, such 30 day period shall be extended if Holdings or the relevant Subsidiary has commenced and continues diligently to pursue prudent and necessary response actions and otherwise complies with Section 5.09 and the applicable Environmental Laws; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made pursuant to Section 4.02 by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document required to have been delivered hereby or thereby shall be incorrect in any material respect when made, confirmed or deemed made pursuant to Section 4.02 (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof); or
- (e) Cross-Default. (i) Any Borrower or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity;

provided, that this clause (e)(B) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the assets securing such Indebtedness, if such sale or transfer is permitted hereunder; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Borrower or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which any Borrower or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, (x) the Swap Termination Value owed by such Loan Party as a result thereof is greater than the Threshold Amount and (y) such Swap Termination Value has not been paid or discharged within 15 days of the incurrence thereof; or

(f) Insolvency Proceedings, Etc. Any Loan Party institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, provisional liquidator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, provisional liquidator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days (or 90 calendar days in the case of any Loan Party that is a Foreign Subsidiary); or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days (or 90 calendar days in the case of any Loan Party that is a Foreign Subsidiary), or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Loan Party one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders then outstanding) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of 30 consecutive days; or

(i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Borrower under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) any Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Invalidity of Loan Documents. Any material provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted

hereunder or thereunder or pursuant to satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in writing the validity or enforceability of any material provision of any Loan Document; or any Loan Party denies in writing that it has any or further liability or obligation under any Loan Document, or purports in writing to revoke, terminate or rescind any provision of any Loan Document; or

(k) Change of Control. There occurs any Change of Control (other than as permitted by Section 6.05(a)(ii)); or

(l) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01, 6.13, 6.14 or 6.15 shall for any reason (other than pursuant to the terms thereof or the terms of Section 2.16) cease to create a valid and, except in the case of Collateral for which perfection cannot be accomplished by filing a Financing Statement or delivery of a stock certificate, perfected Lien (subject to Liens permitted by Section 7.01) on any Collateral purported to be covered thereby having a fair market value in excess of \$5,000,000; or

(m) Subordination and Intercreditor Provisions. The subordination or intercreditor provisions referred to in Sections 7.01(q) and 7.01(r) (the "Intercreditor Provisions") shall, in whole or in part, terminate, cease to be effective or cease to be legally valid, binding and enforceable against any holder of the applicable Indebtedness in the principal amount in excess of the Threshold Amount for a period in excess of 30 calendar days; or (ii) any Loan Party shall, directly or indirectly, disavow or contest in writing (A) the effectiveness, validity or enforceability of any of the Intercreditor Provisions, (B) that the Intercreditor Provisions exist for the benefit of the Administrative Agent, the Lenders and the L/C Issuer or (C) that all payments of principal of or premium and interest on the applicable Indebtedness, or realized from the liquidation of property of the Persons the subject of the Intercreditor Provisions, shall be subject to any of the Intercreditor Provisions.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that the Borrowers Cash Collateralize their respective L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize their respective L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.13, 2.17 and 2.18, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or the L/C Issuer) and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings, to Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements and to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit, ratably among the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy

drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

ARTICLE IX. ADMINISTRATIVE AGENT

9.01 Appointment and Authority.

(a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and no Borrower shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and
- (c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any of the Borrowers or any of their respective Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by a Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other

document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for Borrowers), independent accountants and other experts reasonably selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required

Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrowers and such Person remove such Person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Secured Parties under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.07 and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of

its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Borrowers of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Documentation Agents or Syndication Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations (other than Obligations under Secured Hedge Agreements and Secured Cash Management Agreements) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders,

the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and (i), 2.09 and 10.04 allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, provisional liquidator, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 Collateral and Guaranty Matters. Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank of Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) that is either sold or to be sold as part of or in connection with any sale, or otherwise transferred (pursuant to an Investment or otherwise), in either event pursuant to a transaction permitted hereunder or under any other Loan Document, (iii) subject to Section 10.01, if approved, authorized or ratified in writing by the Required Lenders or (iv) in accordance with Section 2.16;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(h) or 7.01(k); and

(c) to release any Guarantor from its obligations under its Guaranty if (1) such Person ceases to be a Material Subsidiary as a result of a transaction permitted hereunder or (2) in the case of a Foreign Subsidiary that is a Guarantor hereunder, the Administrative Agent (after consultation with the Borrowers) determines that it would not be commercially reasonable for

such Guarantor to remain a Guarantor (taking into account the expense (including taxes), the ability of Borrowers or such Guarantor to obtain any necessary approvals or consents required to be obtained under applicable law (but have not been previously obtained) in connection therewith, and the effectiveness and enforceability thereof under applicable law) or (3) the Guaranties provided by such Guarantor becomes illegal under applicable law and such Guarantor delivers to the Administrative Agent a legal opinion from its counsel to such effect, and no reasonable alternative structure can be devised having substantially the same effect as the issuance of a Guarantee that would not be illegal under applicable law.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

**ARTICLE X.
MISCELLANEOUS**

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

- (a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;
- (b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;
- (d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document; provided, however, that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of any Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;
- (e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;
- (f) amend Section 1.06 or the definition of "Alternative Currency" without the written consent of each Lender;
- (g) change any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder without the written consent of each Lender;
- (h) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender; or

(i) release any Borrower from any Guaranty or all or substantially all of the value of the Guaranties without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended, and the stated maturity date of any Loan made by any Defaulting Lender may not be extended, without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrowers may replace such non-consenting Lender in accordance with Section 10.13.

10.02 Notices; Effectiveness; Electronic Communication. (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to a Borrower, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 10.02 (provided that any notice delivered to the Company shall be deemed to have been delivered to each Borrower); and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a

Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuer or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower's or

the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to any Borrower or its securities for purposes of United States Federal or state securities Laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Loan Document are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver. (a) Costs and Expenses. The Borrowers shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, any Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer), and shall pay all fees and time charges for attorneys who may be employees of the Administrative Agent, any Lender or the L/C Issuer, in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) Indemnification by the Borrowers. The Borrowers shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnatee), and shall indemnify and hold harmless each Indemnatee from all

fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Loan Party, and regardless of whether any Indemnitee is a party thereto, IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Aggregate Commitments at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, no Borrower shall assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns. (a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the

provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (g) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section, the Indemnitees, and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it under either Facility); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it under either Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) under a Facility or, if the relevant Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed); provided, however, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of Holdings (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that Holdings shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Borrowers. No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or any of the Borrowers' respective Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (A), or (B) to a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment

shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information

regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, Defaulting Lender or a Borrower or any of the Borrowers' Affiliates or Subsidiaries)(each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it under either Facility); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. Subject to subsection (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Participant Register. Each Lender that sells a participation in a Loan, acting as an agent of the applicable Borrower solely for purposes of applicable United States federal income tax law and Treasury regulations promulgated thereunder, shall maintain a "book entry" register (as further described in the foregoing Treasury regulations) on which it records the name and address of the applicable Participant and the principal amounts of such Participant's interest in the Loans and Commitments (each such register, a "Participant Register"). The entries in the Participant Register shall be conclusive absent manifest error, and the applicable Lender, Borrower and the Administrative Agent shall treat each Person whose name is recorded in the

Participant Register pursuant to the terms hereof as having “ownership of an interest” (as such term is defined the applicable Treasury regulations) in such Loans for all purposes of this Agreement, notwithstanding any notice to the contrary. Upon request by a Borrower, such Lender shall make the Participant Register available to the Borrower.

(g) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any central bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitments and Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days’ notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days’ notice to the Borrowers, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided, however, that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

10.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates’ respective partners, directors, officers, employees, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners) or in connection with any pledge or assignment permitted under Section 10.07(g), (c) to the extent required by applicable laws or regulations or

by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to a Borrower and its obligations, (g) with the consent of the Borrowers, (h) to the extent such Information (x) was or becomes publicly available other than as a result of a breach of this Section by such Lender, (y) was or becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers or (z) was independently developed by the Administrative Agent, such Lender or the L/C Issuer or (i) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder.

For purposes of this Section, "Information" means all information received from the Borrowers or any Subsidiary relating to the Borrowers or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by the Borrowers or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Borrowers or a Subsidiary thereof, as the case may be and (b) it has developed compliance procedures regarding the use of material non-public information.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower against any and all of the obligations of such Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, the L/C Issuer or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the

provisions of Section 2.18 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrowers may, at their sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrowers shall have paid (or caused a Designated Borrower to pay) to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the applicable Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc. (a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF.

(b) SUBMISSION TO JURISDICTION. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS

CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers are arm's-length commercial transactions between such Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, (B) such Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) such Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each Lender and each Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for such Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender nor any Arranger has any obligation to such Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders, the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of such Borrower and its Affiliates, and neither the Administrative Agent nor any Lender nor any Arranger has any obligation to disclose any of such interests to any Borrower or its Affiliates. To the fullest extent permitted by law, each of the Borrowers hereby waives and releases any claims that it may have against the Administrative Agent, the Lenders and the Arrangers with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

10.18 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender)

hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of each Borrower and other information that will allow such Lender or the Administrative Agent, as applicable, to identify such Borrower in accordance with the Act. Each Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Act.

10.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

Schedule E-1 - Excluded Domestic Subsidiaries and Excluded Foreign Subsidiaries

1. Herbalife (China) Health Products Ltd.
 2. Herbalife Dominicana, S.A.
 3. Herbalife Del Ecuador, S.A.
 4. Herbalife Products Malaysia SDN BHD
 5. Herbalife International Products N.V.
 6. Herbalife Natural Products, LP
 7. Herbalife Asia Pacific Services Limited
 8. Herbalife NatSource (Hunan) Natural Products Co., Ltd.
 9. Herbalife International India Private Limited
 10. HIIP Investment Co., LLC
 11. Herbalife Internacional de Mexico, S.A. de C.V.
 12. Herbalife Mexicana, S.A. de C.V.
 13. Herbalife Products De Mexico, S.A. de C.V.
 14. Herbavida International de Mexico, S.A. de C.V.
 15. Servicios Integrales HIM, S.A. de C.V.
 16. HIL Swiss International GmbH
 17. HBL Products, SA
 18. PT Herbalife Indonesia
 19. Herbalife International Philippines, Inc.
 20. Vida Herbal Suplementos Alimenticios, C.A.
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Schedule G-1 - Initial Guarantors

1. Herbalife International of America, Inc., a Nevada corporation.
 2. Herbalife International Communications, Inc., a California corporation.
 3. Herbalife International Do Brasil Ltda, a corporation dually organized in Brazil and Delaware.
 4. Herbalife Korea Co., Ltd., a corporation dually organized in the Republic of Korea and Delaware.
 5. Herbalife Taiwan, Inc., a California corporation.
 6. Herbalife International of Europe, Inc., a California corporation,
 7. WH Intermediate Holdings Ltd., a Cayman Islands exempted company with limited liability.
 8. WH Luxembourg Holdings S.à.R.L., a Luxembourg private limited liability company.
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Schedule 1.01 - Mandatory Cost Formulae

1. The Mandatory Cost (to the extent applicable) is an addition to the interest rate to compensate Lenders for the cost of compliance with:

(a) the requirements of the Bank of England and/or the Financial Services Authority (or, in either case, any other authority which replaces all or any of its functions); or

(b) the requirements of the European Central Bank.

2. On the first day of each Interest Period (or as soon as possible thereafter) the Administrative Agent shall calculate, as a percentage rate, a rate (the “Additional Cost Rate”) for each Lender, in accordance with the paragraphs set out below. The Mandatory Cost will be calculated by the Administrative Agent as a weighted average of the Lenders’ Additional Cost Rates (weighted in proportion to the percentage participation of each Lender in the relevant Loan) and will be expressed as a percentage rate per annum. The Administrative Agent will, at the request of any Borrower or any Lender, deliver to such Borrower or such Lender, as the case may be, a statement setting forth the calculation of any Mandatory Cost.

3. The Additional Cost Rate for any Lender lending from a Lending Office in a Participating Member State will be the percentage notified by that Lender to the Administrative Agent. This percentage will be certified by such Lender in its notice to the Administrative Agent to be its reasonable determination of the cost (expressed as a percentage of such Lender’s participation in all Loans made from such Lending Office) of complying with the minimum reserve requirements of the European Central Bank in respect of Loans made from that Lending Office.

4. The Additional Cost Rate for any Lender lending from a Lending Office in the United Kingdom will be calculated by the Administrative Agent as follows:

(a) in relation to any Loan in Sterling:

$$\frac{AB+C(B-D)+E \times 0.01}{100 - (A+C)} \quad \text{per cent per annum}$$

(b) in relation to any Loan in any currency other than Sterling:

$$\frac{E \times 0.01}{300} \quad \text{per cent per annum}$$

Where:

“A” is the percentage of Eligible Liabilities (assuming these to be in excess of any stated minimum) which that Lender is from time to time required to maintain as an interest free cash ratio deposit with the Bank of England to comply with cash ratio requirements.

“B” is the percentage rate of interest (excluding the Applicable Rate, the Mandatory Cost and any interest charged on overdue amounts pursuant to the first sentence of Section 2.08(b) and, in the case of interest (other than on overdue amounts) charged at the Default Rate, without counting any increase in interest rate effected by the charging of the Default Rate) payable for the relevant Interest Period of such Loan.

“C” is the percentage (if any) of Eligible Liabilities which that Lender is required from time to time to maintain as interest bearing Special Deposits with the Bank of England.

“D” is the percentage rate per annum payable by the Bank of England to the Administrative Agent on interest bearing Special Deposits.

“E” is designed to compensate Lenders for amounts payable under the Fees Rules and is calculated by the Administrative Agent as being the average of the most recent rates of charge supplied by the Lenders to the Administrative Agent pursuant to paragraph 7 below and expressed in pounds per £1,000,000.

5. For the purposes of this Schedule:

(a) “Eligible Liabilities” and “Special Deposits” have the meanings given to them from time to time under or pursuant to the Bank of England Act 1998 or (as may be appropriate) by the Bank of England;

(b) “Fees Rules” means the rules on periodic fees contained in the FSA Supervision Manual or such other law or regulation as may be in force from time to time in respect of the payment of fees for the acceptance of deposits;

(c) “Fee Tariffs” means the fee tariffs specified in the Fees Rules under the activity group A.1 Deposit acceptors (ignoring any minimum fee or zero rated fee required pursuant to the Fees Rules but taking into account any applicable discount rate); and

(d) “Sterling” and “£” mean the lawful currency of the United Kingdom.

(e) “Tariff Base” has the meaning given to it in, and will be calculated in accordance with, the Fees Rules.

6. In application of the above formulae, A, B, C and D will be included in the formulae as percentages (*i.e.* 5% will be included in the formula as 5 and not as 0.05). A negative result obtained by subtracting D from B shall be taken as zero. The resulting figures shall be rounded to four decimal places.

7. If requested by the Administrative Agent or any Borrower, each Lender with a Lending Office in the United Kingdom or a Participating Member State shall, as soon as practicable after publication by the Financial Services Authority, supply to the Administrative Agent and Borrowers, the rate of charge payable by such Lender to the Financial Services Authority pursuant to the Fees Rules in respect of the relevant financial year of the Financial Services Authority (calculated for this purpose by such Lender as being the average of the Fee Tariffs applicable to such Lender for that financial year) and expressed in pounds per £1,000,000 of the Tariff Base of such Lender.
 8. Each Lender shall supply any information required by the Administrative Agent for the purpose of calculating its Additional Cost Rate. In particular, but without limitation, each Lender shall supply the following information in writing on or prior to the date on which it becomes a Lender:
 - (a) the jurisdiction of the Lending Office out of which it is making available its participation in the relevant Loan; and
 - (b) any other information that the Administrative Agent may reasonably require for such purpose.Each Lender shall promptly notify the Administrative Agent in writing of any change to the information provided by it pursuant to this paragraph.
 9. The percentages of each Lender for the purpose of A and C above and the rates of charge of each Lender for the purpose of E above shall be determined by the Administrative Agent based upon the information supplied to it pursuant to paragraphs 7 and 8 above and on the assumption that, unless a Lender notifies the Administrative Agent to the contrary, each Lender's obligations in relation to cash ratio deposits and Special Deposits are the same as those of a typical bank from its jurisdiction of incorporation with a lending office in the same jurisdiction as its Lending Office.
 10. The Administrative Agent shall have no liability to any Person if such determination results in an Additional Cost Rate which over- or under-compensates any Lender and shall be entitled to assume that the information provided by any Lender pursuant to paragraphs 3, 7 and 8 above is true and correct in all respects.
 11. The Administrative Agent shall distribute the additional amounts received as a result of the Mandatory Cost to the Lenders on the basis of the Additional Cost Rate for each Lender based on the information provided by each Lender pursuant to paragraphs 3, 7 and 8 above.
 12. Any determination by the Administrative Agent pursuant to this Schedule in relation to a formula, the Mandatory Cost, an Additional Cost Rate or any amount payable to a Lender shall, in the absence of manifest error, be conclusive and binding on all parties hereto.
 13. The Administrative Agent may from time to time, after consultation with the Borrowers and the Lenders, determine and notify to all parties any amendments which are required to be made to this Schedule in order to comply with any change in law, regulation or any
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requirements from time to time imposed by the Bank of England, the Financial Services Authority or the European Central Bank (or, in any case, any other authority which replaces all or any of its functions) and any such determination shall, in the absence of manifest error, be conclusive and binding on all parties hereto.

For avoidance of doubt, Sterling shall not be an Alternative Currency unless and until it shall have been approved as an Alternative Currency pursuant to Section 1.06 of the Agreement.

COMMITMENTS AND APPLICABLE PERCENTAGES

Lender	Term A Commitment	Applicable Percentage	Revolving Credit Commitment	Applicable Percentage
Bank of America, N.A.	\$102,000,000	20.4%	\$120,000,000	17.142857143%
Coöperative Centrale Raiffeisen-Boerenleenbank B.A., “Rabobank Nederland”, New York Branch	\$75,000,000	15.0%	\$100,000,000	14.285714286%
HSBC Bank USA, National Association	\$75,000,000	15.0%	\$75,000,000	10.714285714%
JPMorgan Chase Bank, N.A.	\$30,000,000	6.0%	\$120,000,000	17.142857143%
Wells Fargo Bank, N.A.	\$70,000,000	14.0%	\$80,000,000	11.428571429%
Fifth Third Bank	\$50,000,000	10.0%	\$0	0.0%
KeyBank National Association	\$0	0.0%	\$75,000,000	10.714285714%
Union Bank N.A.	\$0	0.0%	\$45,000,000	6.428571429%
ING Bank N.V., Dublin Branch	\$10,000,000	2.0%	\$30,000,000	4.285714286%
Comerica Bank	\$0	0.0%	\$30,000,000	4.285714286%
Mizuho Corporate Bank, Ltd.	\$30,000,000	6.0%	\$0	0.0%
Associated Bank National Association	\$0	0.0%	\$25,000,000	3.571428571%
Standard Chartered Bank	\$15,000,000	3.0%	\$0	0.0%
Mega International Commercial Bank Co., Ltd. New York Branch	\$13,000,000	2.6%	\$0	0.0%
First Commercial Bank, Ltd., Los Angeles Branch	\$10,000,000	2.0%	\$0	0.0%
Land Bank of Taiwan Los Angeles Branch	\$10,000,000	2.0%	\$0	0.0%
Taiwan Business Bank Los Angeles Branch	\$10,000,000	2.0%	\$0	0.0%
Total	\$500,000,000	100.0%	\$700,000,000	100.0%

Schedule 5.03 - Authorizations and Consents

Approval of the transactions contemplated by the Loan Documents by the Board of Directors (or analogous governing body) of each Loan Party, which have been obtained as of the Restatement Effective Date.

Schedule 5.06 – Litigation

1. Certain of the Company's subsidiaries have been subject to tax audits by governmental authorities in their respective countries. In certain of these tax audits, governmental authorities are proposing that significant amounts of additional taxes and related interest and penalties are due. The Company and its tax advisors believe that there are substantial defenses to their allegations that additional taxes are owed, and the Company is vigorously contesting the additional proposed taxes and related charges. On May 7, 2010, the Company received an assessment from the Mexican Tax Administration Service in an amount equivalent to approximately \$86 million, translated at the period ended spot rate, for various items, the majority of which was Value Added Tax, or VAT, allegedly owed on certain of the Company's products imported into Mexico during the years 2005 and 2006. This assessment is subject to interest and inflationary adjustments. On July 8, 2010, the Company initiated a formal administrative appeal process. On May 13, 2011, the Mexican Tax Administration Service issued a resolution on the Company's administrative appeal. The resolution nullified the assessment. Since the Mexican Tax Administration Service can further review the tax audit findings and re-issue some or all of the original assessment, the Company commenced litigation in the Tax Court of Mexico in August 2011 to dispute the assertions made by the Mexican Tax Administration Service in the case. The Mexican Tax Administration filed a response which was received by the Company in April 2012. The response challenged the assertions that the Company made in its August 2011 filing. The Mexican Tax Administration commenced audits of the Company's Mexican subsidiaries for the period from January to September 2007 and the 2011 year. The tax audits are in the initial stages. Prior to the nullification of the assessment relating to the 2005 and 2006 years the Company entered into agreements with certain insurance companies to allow for the potential issuance of surety bonds in support of its appeal of the assessment. These arrangements with the insurance companies remain in place in the event that the assessment is re-issued. The Company has not recognized a loss as the Company, based on its analysis and guidance from its advisors, does not believe a loss would be probable if the assessment is re-issued or if any additional assessment is issued. Further, the Company is currently unable to reasonably estimate a possible loss or range of loss that could result from an unfavorable outcome if the assessment was re-issued or any additional assessments were to be issued for these or other periods. The Company believes that it has meritorious defenses if the assessment is re-issued or would have meritorious defenses if any additional assessment is issued.

2. The Company received an assessment from the Spanish Tax Authority in an amount equivalent to approximately \$4.0 million translated at the period ended spot rate, for withholding taxes, interest and penalties related to payments to Spanish distributors for the 2003-2004 period. The Company appealed the assessment to the National Appellate Court (Audiencia Nacional). Based on the ruling of the National Appellate Court, substantially all of the assessment will be nullified, but the Company will begin withholding taxes on payments to Spanish distributors for the 2012 year. If the Spanish Tax Authority raises the same issue in later years, the Company believes that it has meritorious defenses. The Company has not recognized a loss as the Company does not believe a loss is probable. The Company is currently unable to reasonably estimate a possible loss or range of loss that could result from an unfavorable outcome if additional assessments for other periods were to be issued.

3. The Company received a tax assessment in September 2009, from the Federal Revenue Office of Brazil in an amount equivalent to approximately \$4.2 million U.S. dollars translated at the period ended spot rate, related to withholding/contributions based on payments to the Company's distributors during 2004. The Company has appealed this tax assessment to the Administrative Council of Tax Appeals (2nd level administrative appeal) as it believes it has meritorious defenses and it has not recognized a loss as the Company does not believe a loss is probable. The Company is currently unable to reasonably estimate the amount of the loss that may result from an unfavorable outcome if additional assessments for other periods were to be issued.

4. The Company received an order from a Rome Labor Court on March 1, 2012 to pay an amount equivalent to approximately \$6.8 million U.S. dollars translated at the period ended spot rate, for social contributions, interest and penalties related to payments to Italian distributors from 2002 through 2005. The Company has filed a writ with the Rome Labor Court appealing the order and the government filed a response brief. At a hearing on July 12, 2012, the government announced its intention to withdraw the assessment and the order to pay the assessment. A hearing on this matter is scheduled for October 23, 2012.

These matters may take several years to resolve. While the Company believes it has meritorious defenses, it cannot be sure of their ultimate resolution. Although the Company has reserved amounts for certain matters that the Company believes represent the most likely outcome of the resolution of these related disputes, if the Company is incorrect in the assessment, the Company may have to record additional expenses, when it becomes probable that an increased potential liability is warranted.

Schedule 5.11 – Taxes

See Schedule 5.06.

Schedule 5.13 – Subsidiaries; Other Equity Investments

(a) Subsidiaries

Subsidiary	Percentage Owned	Immaterial Subsidiary (Y/N)
WH Intermediate Holdings Ltd.	100% - Herbalife Ltd.	N
HBL Ltd.	100% - WH Intermediate Holdings Ltd	Y
WH Luxembourg Holdings S.à R.L.	100% - HBL Luxembourg Holdings S.à R.L.	N
HLF Luxembourg Holdings S.à R.L.	100% - WH Luxembourg Holdings S.à R.L.	Y
WH Capital Corporation	100% - HLF Luxembourg Holdings S.à R.L.	Y
WH Luxembourg Intermediate Holdings S.à R.L.	100% WH Capital Corporation	Y
HV Holdings Ltd.	100% - WH Intermediate Holdings Ltd	Y
Herbalife International, Inc. (see below)	100% - WH Luxembourg Intermediate Holdings S.à R.L.	N
Herbalife International Luxembourg S.à R.L. (see below)	100% - WH Luxembourg Holdings S.à R.L.	N
Herbalife Australasia Pty., Ltd.	100% - Herbalife International, Inc.	Y
Herbalife China, LLC	100% - Herbalife International, Inc.	Y
Herbalife del Ecuador, S.A.	99.99% - Herbalife International, Inc. .01% - Herbalife International of America, Inc.	Y
Herbalife Denmark ApS	100% - Herbalife International, Inc.	Y
Herbalife Dominicana, S.A.	61% - Herbalife International of America, Inc. 34% - Herbalife International, Inc. 1% - Herbalife International Distribution, Inc. 1% - Herbalife International Communication, Inc. 1% - Herbalife International South Africa, Inc. 1% - Herbalife International of Europe, Inc. 1% - Herbalife Taiwan. All represented by a special attorney	Y
Herbalife Europe Limited	100% - Herbalife (UK) Limited	Y
Herbalife Foreign Sales Corporation (Barbados)	100% - Herbalife International, Inc.	Y
Herbalife Internacional de Mexico, S.A. de C.V.	99.98% - Herbalife International, Inc. by Luis Emilio Lujan Sauri 0.02% - Herbalife International of America, Inc. by Jose Antonio Cervantes Acosta	N
Herbalife International Argentina, S.A.	90% - Herbalife International, Inc. 10% - Herbalife International of America, Inc.	Y
Herbalife International Belgium, S.A.	99% - Herbalife International, Inc. by Brett R. Chapman 1% - Herbalife International of America, Inc. by Richard Goudis	Y
Herbalife International Communications, Inc.	100% - Herbalife International, Inc.	N
Herbalife International of Europe, Inc.	100% - Herbalife International, Inc.	N
Herbalife International del Colombia	100% - Herbalife International, Inc.	Y

Subsidiary	Percentage Owned	Immaterial Subsidiary (Y/N)
Herbalife International del Ecuador	100% - Herbalife International, Inc.	Y
Herbalife International Deutschland GmbH	100% - Herbalife International, Inc.	Y
Herbalife International Distribution, Inc.	100% - Herbalife International, Inc.	Y
Herbalife International Do Brasil Ltda	99.99% - Herbalife International, Inc. (Managing Partner) by Richard P. Goudis <0.01 - Herbalife International of America, Inc. by Brett R. Chapman	N
Herbalife International España, S.A.	99.82% - Herbalife International, Inc. 0.09% - Herbalife International of America, Inc. 0.09% - Herbalife (U.K.) Limited	Y
Herbalife International Finland OY	100% - Herbalife International, Inc.	Y
Herbalife International France, S.A.	99.99% - Herbalife International, Inc. <0.01% - Herbalife International of America, Inc., <0.01% - Herbalife (U.K.) Limited <0.01% - Herbalife International España, Inc. <0.01% - Herbalife (NZ) Limited <0.01% - Herbalife Australasia Pty. Ltd. <0.01% - David Wynne Roberts	Y
Herbalife International Greece S.A.	100% - Herbalife International, Inc.	Y
Herbalife International India Private Limited	24% - HIIP Investment Co., LLC 76% - Herbalife International, Inc.	Y
Herbalife International (Netherlands) B.V.	100% - Herbalife International, Inc.	Y
Herbalife International of America, Inc.	100% - Herbalife International, Inc.	N
Herbalife International of Hong Kong Limited.	99% - Herbalife International, Inc. by Richard P. Goudis 1% - Herbalife International of America, Inc. by Brett R. Chapman	Y
Herbalife International of Israel (1990) Ltd.	99% - Herbalife International, Inc. 1% - Herbalife International of America, Inc.	Y
Herbalife International Philippines, Inc.	99.99% - Herbalife International, Inc. <0.01% - Robert Levy <0.01% - Gary Huang <0.01% - Abelardo Tolentino <0.01% - Harvey Ringler <0.01% - Richard Goudis	Y
Herbalife International Products N.V.	100% - Herbalife International, Inc.	Y
Herbalife International Russia 1995 Ltd.	99% - Herbalife International, Inc. 1% - Herbalife International of America, Inc.	Y
Herbalife International South Africa, Ltd.	100% - Herbalife International, Inc.	Y
Herbalife International (Thailand), Ltd.	100% - Herbalife International, Inc.	Y
Herbalife International Urunleri Ticaret Limited (Turkey)	50% - Herbalife International, Inc. 50% - Herbalife International of America, Inc.	Y

Subsidiary	Percentage Owned	Immaterial Subsidiary (Y/N)
Herbalife International, S.A.	99.99% - Herbalife International, Inc. <0.01% - Herbalife International of America, Inc. <0.01% - Herbalife (UK) Limited <0.01% - Herbalife International España, S.A. <0.01% - Herbalife International France, S.A.	Y
Herbalife Italia, S.p.A.	95% - Herbalife International, Inc. 5% - Herbalife International of America, Inc.	Y
Herbalife Korea Co., Ltd.	100% - Herbalife International, Inc.	N
Herbalife Manufacturing LLC	100% - Herbalife International, Inc.	Y
Herbalife Norway Products AS	100% - Herbalife International, Inc.	Y
Herbalife (NZ) Limited	100% - Herbalife International, Inc.	Y
Herbalife of Canada Ltd.	100% - Herbalife International, Inc.	Y
Herbalife of Japan K.K.	100% - Herbalife International, Inc.	Y
Herbalife Polska Sp. Z. o. o.	100% - Herbalife International, Inc.	Y
HBL Products , S.A.	50% - Herbalife International, Inc. 50% - Herbalife International of America, Inc.	Y
Herbalife Products de Mexico, S.A. de C.V.	99 % - Herbalife International, Inc. by Luis Emilio Lujan Sauri 1% - Herbalife International of America, Inc. by Jose Antonio Cervantes Acosta	Y
Herbalife Sweden Aktiebolag	100% - Herbalife International, Inc.	Y
Herbalife Taiwan, Inc.	100% - Herbalife International, Inc.	N
Herbalife (UK) Limited	100% - Herbalife International, Inc.	Y
HIIP Investment Co., LLC	100% - Herbalife International, Inc.	Y
Importadora y Distribuidora Herbalife International de Chile, Limitada	99.99% - Herbalife International, Inc. 0.01% - Herbalife International of America, Inc.	Y
Promotions One, Inc.	100% - Herbalife International, Inc.	Y
PT Herbalife Indonesia	0.18% - Alpiter Steven Silaen 99.82% - PT Dian Gatra Mokmur	Y
Servicios Integrales HIM, S.A. de C.V.	99% - Herbalife International, Inc. 1% - Herbalife International of America, Inc.	Y
Vida Herbal Suplementos Alimenticio, C.A., LLC	<0.01% - Herbalife International, Inc. 99.99% - Netherlands VidaHerbal Cooperatief	Y
VidaHerbal Dutch LLC	100% - Herbalife International, Inc.	Y
HLF Intl of India Investment Co.	100% - Herbalife International, Inc.	Y
Netherlands VidaHerbal Cooperatief UA	99% - Herbalife International, Inc. 1% - VidaHerbal Dutch LLC.	Y
Herbalife Mexicana, S.A. de C.V.	99.98% - Herbalife International, Inc. 0.02% - Herbalife International of America, Inc.	Y
Herbalife Africa S.à R.L.	100% - Herbalife International Luxembourg S.à R.L.	Y
Herbalife Asia Pacific Services Ltd.	100% - Herbalife Natural Products LP	Y
Herbalife Central America LLC	100% - Herbalife International Luxembourg S.à R.L.	Y
Herbalife (China) Health Products Ltd.	100% - Herbalife International Luxembourg, S.à R.L.	N
Herbalife d.o.o. (Croatia)	100% - Herbalife International Luxembourg, S.à R.L.	Y

Subsidiary	Percentage Owned	Immaterial Subsidiary (Y/N)
Herbalife Distribution Ltd.	100% - Herbalife International Luxembourg S.à R.L.	Y
Herbalife Hungary Trading, Limited (Herbalife Magyarország Kereskedelmi Kft.)	97.6% - Herbalife International Luxembourg S.à R.L. 2.4% - WH Luxembourg Holdings S.à R.L.	Y
Herbalife International Costa Rica, Sociedad de Responsabilidad Limitada	100% - Herbalife International Luxembourg, S.à R.L.	Y
Limited Liability Company Herbalife International RS	99% - Herbalife International Luxembourg S.à R.L. 1% - WH Luxembourg Holdings S.à R.L.	Y
Herbalife International Singapore Pte. Ltd.	100% - Herbalife International Luxembourg, S.à R.L.	Y
Herbalife Luxembourg Distribution S.à R.L.	100% - Herbalife International Luxembourg S.à R.L.	Y
Herbalife Natural Products LP	89.9% (Limited Partnership Interest) - Herbalife International Luxembourg S.à R.L. 0.1% (General Partnership Interest) - HLF Luxembourg Distribution S.à R.L. 10% (Limited Partnership Interest) - Qun Yi (S Corp)	Y
Herbalife NatSource (Hunan) Natural Products Co., Ltd.	100% - Herbalife Asia Pacific Services Limited	Y
Herbalife Paraguay S.R.L.	99.99% - Herbalife International Luxembourg, S.à R.L. <0.01% - WH Luxembourg Holdings, S.à R.L.	Y
Herbalife Peru S.R.L.	99% - Herbalife International Luxembourg, S.à R.L. 1% - WH Luxembourg Holdings, S.à R.L.	Y
Herbalife Products Malaysia SDN, BHD	70% - Herbalife International Luxembourg S.à R.L. 15% - Noraliza Ayub 15% - Mohd Dehalan Ahmad	Y
Herbalife RO SRL	99% - Herbalife International Luxembourg S.à R.L. 1% - HLF Luxembourg Distribution S.à R.L.	Y
Herbalife Ukraine LLC	99% - Herbalife International Luxembourg S.à R.L. 1% - HLF Luxembourg Distribution S.à R.L.	Y
Herbalife Uruguay S.R.L.	99% - Herbalife International Luxembourg S.à R.L. 1% - HLF Luxembourg Distribution S.à R.L.	Y
Herbalife Vietnam SMLLC	100% - Herbalife International Luxembourg, S.à R.L.	Y
HIL Swiss International GmbH	95% - Herbalife International Luxembourg S.à R.L. 5% - Robert A. Landolt	Y
HLF Colombia Ltda.	50% - Herbalife Luxembourg Distribution, S.à R.L. 50% - HLF Luxembourg Distribution, S.à R.L.	Y
HLF Luxembourg Distribution S.à R.L.	100% - Herbalife International Luxembourg S.à R.L.	Y
HBL Luxembourg Holdings S.à R.L.	100% - WH Intermediate Holdings Ltd	Y
Herbalife Bulgaria EOOD	100% - Herbalife International Luxembourg, S.à R.L.	Y
WHBL Luxembourg S.à R.L.	100% - WH Luxembourg Holdings S.à R.L.	Y

(b) Other Equity Interests

None.

Schedule 5.17 – Identification Numbers for Foreign Obligor

Foreign Obligor	Jurisdiction	Organizational ID
Herbalife Ltd.	Cayman Islands	CR-116838
Herbalife International Luxembourg S.à.R.L	Luxembourg	B 88006
WH Intermediate Holdings Ltd.	Cayman Islands	CR-117890
WH Luxembourg Holdings S.à.R.L.	Luxembourg	B 88007

Schedule 7.01 – Existing Liens

US Liens

Collateral Description

E(C) = Equipment (all items sold, leased or financed under specific contract)

DEBTOR(S)	JURISDICTION SEARCHED	SECURED PARTY	FILE NO./ FILE DATE	COLLATERAL DESCRIPTION
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2006016613-1 05/24/06	E(C)
			Continuation 2011006109-1 03/11/11	
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2006041567-3 12/19/06	E(C)
			Amendment 2008000071-7 01/02/08	E(C)
		General Electric Capital Corporation PO Box 35713 Billings, MT 59107-5713	Amendment 2011027845-6 10/18/11	
			Continuation 2011027846-8 10/18/11	
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2007012552-9 04/20/07	E(C)
			Amendment 2007042203-6 12/26/07	
			Continuation 2012001882-6 01/23/12	

DEBTOR(S)	JURISDICTION SEARCHED	SECURED PARTY	FILE NO./ FILE DATE	COLLATERAL DESCRIPTION
		General Electric Capital Corporation PO Box 35713 Billings, MT 59107-5713	Amendment 2012001883-8 01/23/12	
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2007031156-2 09/21/07	E(C)
			Amendment 2008033677-0 11/03/08	
		General Electric Capital Corporation PO Box 35713 Billings, MT 59107-5713	Amendment 2012007744-0 03/20/12	
			Continuation 2012007764-2 03/21/12	
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2007039017-6 11/26/07	E(C)
Herbalife International of America, Inc.	NV SOS	General Electric Capital Corporation 3031 North Rocky Pint Drive West, Suite 400 Tampa, FL 33607	Initial 2007042616-1 12/28/07	E(C)
Herbalife International of America, Inc.	NV SOS	Bank of The West 201 N. Civic Dr., Suite 360B Walnut Creek, CA 94596	Initial 2008001572-0 01/15/08	E(C)
			Amendment 2009028984-6 12/02/09	
Herbalife International of America, Inc.	NV SOS	Xerox Corporation 1301 Ridgeview Bldg 300 Lewisville, TX 75057	Initial 2009016342-2 07/01/09	E(S)

DEBTOR(S)	JURISDICTION SEARCHED	SECURED PARTY	FILE NO./ FILE DATE	COLLATERAL DESCRIPTION
Herbalife International of America, Inc.	NV SOS	Banc of America Leasing & Capital, LLC 2059 Northlake Parkway, 3 North Tucker, GA 30084	Initial 2009028989-6 12/02/09	E(C)
Herbalife International of America, Inc.	NV SOS	Cisco Systems Capital Corporation 170 W. Tasman Drive MS SJ 13-3 San Jose, CA 95134	Initial 2010030654-1 12/07/10	E(C)

Foreign Liens:

1. Herbalife Australasia Pty Ltd office lease. Cash collateral for Bank Guarantee Facility with National Australia Bank Limited for A\$339,125.
 2. Herbalife Korea Co., Ltd. DSMAC guarantees. Cash collateral for bank guarantees with Kookmin and Shinhan Bank totaling KRW 10,800,000,000.
 3. Herbalife Vietnam SMLLC direct selling license. Escrow Deposit based on Government decree 110/2005/ND totaling VND 1,000,000,000.
 4. Herbalife (China) Health Products Ltd direct selling license. Escrow deposit totaling \$2,500,000 (year 2005 exchange rate of 8). (RMB amount is: 20,000,000) with new exchange rate (6.4) USD is \$3,125,000.
 5. Herbalife of Japan K.K. customs duty guarantee to expedite clearing customs for JPY 20,000,000.
 6. Herbalife International Do Brasil Ltda cash collateral of R\$278,757.07 with court as guarantee for pending lawsuit; and pledge of inventory totaling R\$190,883.81 with government authorities as guarantee for pending tax litigation.
 7. Herbalife International Argentina, S.A. office lease deposit of AR\$181,753.
 8. Herbalife Norway Products AS office lease deposit of NOK 370,700.
 9. Herbalife (UK) Ltd cash collateral of ISK 8,567,246 as guarantee for Iceland customs.
 10. Herbalife International Finland O.Y. bank guarantee of 2,500 EUR with Nordea Bank for Finnish customs.
 11. Herbalife International (Netherlands) B.V. office lease deposit for €65,000.
 12. Herbalife International España, S.A. office, warehouse and QRC lease deposit for €198,848; Post office service, €5,000; Cars €552.
 13. Herbalife Peru S.R.L. office and warehouse lease deposits totaling \$85,149.
 14. Herbalife International Deutschland GmbH office lease deposit for €200,000.
 15. Herbalife Uruguay S.R.L. office least deposit for \$85,000 USD with Hipotecario Bank.
-

Schedule 7.03 – Existing Indebtedness

Capital Leases:

As of March 31, 2012: \$1.21 million

Detail:

<i>Lessee</i>	<i>Lessor</i>	<i>Items Leased</i>	<i>Outstanding</i>
Herbalife International of America, Inc. (in USD)	GE Capital	office furniture	566,698
	Banc of America	office furniture	323,648
	Cisco	routers & equipment	59,618
	HP	equipment	1,233
			951,197
Herbalife Manufacturing LLC (in USD)	Tennant Company	power scrubbers	4,352
			4,352
Herbalife Polska (in PLN)	Volvo	car	87,134
	Lexus	car	154,086
			241,220
Total			1,212,414

Other Indebtedness:

Korea: Outstanding guarantees with Massachusetts & Colorado (Direct Sales Mutual Aid Coop)
Amounts: KRW 2,200,000,000
Details: Bank guarantees on behalf of Herbalife Korea for payments of returned goods and related cost paid by Massachusetts & Colorado. to end users.

Spain: Outstanding letter of credit in favor of the Spanish tax authority
Amounts: Euro 2,564,000
Details: Guarantee in favor of the Spanish tax authority for ongoing litigation over a 2003-2004 tax assessment.

Luxembourg: HLF Luxembourg Holdings S.à R.L. bank guarantee for Dutch Post for €150,000.

Italy: Herbalife Italia S.p.A for:

- €547,472 for Italian Tax Authority
- € 150,000 for Italian Swimming Federation's
- € 32,000 for L'Aquila University
- €132,000 for New office
- €27,190 for Italian Promotion
- €134,560 for Rome Office

India: Herbalife International India Private Limited for INR 16,256,797 for Commercial Tax Authority

Norway: Herbalife Norway Products AVS for NOK 1,600,000.00 for Customs

Schedule 10.02 – Administrative Agent’s Office; Certain Addresses for Notices

SEC Website for Posting of Financial Statements and Other Filings: <http://www.sec.gov/edgar/>

Addresses:

COMPANY and OTHER BORROWERS:

Richard Caloca

Vice President, Treasurer

HERBALIFE LTD.

990 West 190th Street

Torrance, CA 90502

Phone: 310.851.2300

Fax: 310.767.3328

Email: richardc@herbalife.com

U.S. Taxpayer ID # of Company and Domestic Guarantors:

<u>Entity</u>	<u>Taxpayer Id#</u>
Herbalife International, Inc., a Nevada corporation	22-2695420
Herbalife International of America, Inc., a Nevada corporation	95-3954565
Herbalife International Communications, Inc., a California corporation	95-4520868
Herbalife International Do Brasil Ltda, a corporation dually organized in Brazil and Delaware	52-1951822
Herbalife Korea Co., Ltd., a corporation dually organized in the Republic of Korea and Delaware	98-0165848
Herbalife Taiwan, Inc., a California corporation	95-4534645

ADMINISTRATIVE AGENT:

Administrative Agent & Swingline Lender Office:

(For financial/loan activity – advances, pay down, interest/fee billing and payments, rollovers, rate-settings):

Karen Puente
Bank of America
Mail Code: TX1-492-14-12
BANK OF AMERICA PLAZA
901 MAIN ST
DALLAS TX 75202-3714
Phone: 1.214.209.4108
Fax: 1.214.290.8378
Email: karen.r.puente@baml.com

Remittance Instructions:

Bank of America, N.A.
ABA # 026009593
New York, NY
Account # 1292000883
Attn: Corporate Credit Services
Ref: Herbalife International, Inc.

LC Issuer's Office:

(For fee payments due LC Issuer only and new LC requests and amendments):

Trade Operations
1 Fleet Way
Mail Code: PA6-580-02-30
Scranton, PA 18507
Attention: Mary J. Cooper
Telephone: 570.330.4235
Telecopier: 570.330.4186
Electronic Mail: mary.j.cooper@baml.com

Remittance Instructions:

Bank of America, N.A., Scranton, PA
ABA #: 026-009-593 New York, NY
Account #: 04535-883980
Attn: Scranton Standby
Ref: Herbalife International Inc & LC #

Other Notices as Administrative Agent:

(For financial statements, compliance certificates, maturity extension and commitment change notices, amendments, consents, vote taking, etc)

Bank of America Plaza

Mail Code: NC1-002-15-36

101 S Tryon St, 15th Fl

Charlotte NC 28255-0001

Attention: Darleen R Parmelee

Telephone: 980.388.5001

Telecopier: 704.409.0645

Electronic Mail: darleen.r.parmelee@baml.com

FORM OF COMMITTED LOAN NOTICE

Date: _____, _____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among Herbalife International, Inc., a Nevada corporation (the "Company"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("Holdings"), Herbalife International Luxembourg S.à.r.l., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL"), certain Subsidiaries of the Company party thereto (each a "Designated Borrower" and, together with the Company, Holdings and HIL, the "Borrowers" and, each a "Borrower"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

[The Company][Holdings][HIL] hereby requests, on behalf of itself or, if applicable, the Designated Borrower referenced in item 6 below (the "Applicable Designated Borrower") (select one):

- A Borrowing of Committed Loans A conversion or continuation of Loans

14. On ___ (a Business Day).

15. In the amount of ___.

16. Comprised of _____ [Insert Type of Loan] that are [Revolving Credit Loans] [Term A Loans].

17. In the following currency: ___

18. For Eurocurrency Rate Loans: with an Interest Period of ___ months.

19. [On behalf of _____ [insert name of applicable Designated Borrower].]

The Committed Borrowing, if any, requested herein complies with the provisos to the first sentence of Section 2.01 of the Agreement.

[HERBALIFE INTERNATIONAL, INC.] [HERBALIFE LTD.]
[HERBALIFE INTERNATIONAL LUXEMBOURG S.Á.R.L.]

By: _____
Name: _____
Title: _____

FORM OF SWING LINE LOAN NOTICE

Date: _____, _____

To: Bank of America, N.A., as Swing Line Lender
Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among Herbalife International, Inc., a Nevada corporation (the "Company"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("Holdings"), Herbalife International Luxembourg S.á.r.l., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL"), certain Subsidiaries of the Company party thereto (each a "Designated Borrower" and, together with the Company, Holdings and HIL, the "Borrowers" and, each a "Borrower"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

The undersigned hereby requests a Swing Line Loan:

- 1. On _____ (a Business Day).
- 2. In the amount of \$_____.

The Swing Line Borrowing requested herein complies with the requirements of the provisos to the first sentence of Section 2.04(a) of the Agreement.

HERBALIFE INTERNATIONAL, INC.

By: _____
Name: _____
Title: _____

FORM OF REVOLVING CREDIT NOTE

FOR VALUE RECEIVED, the undersigned ([the “Company”][“Holdings”][“HIL”]) hereby promises to pay to _____ or registered assigns (the “Lender”), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Revolving Credit Loan from time to time made by the Lender to [the Company][Holdings][HIL] under that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “Agreement,” the terms defined therein being used herein as therein defined), among the Company, Holdings, HIL, the Designated Borrowers from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

[The Company][Holdings][HIL] promises to pay interest on the unpaid principal amount of each Revolving Credit Loan from the date of such Revolving Credit Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. Except as otherwise provided in Section 2.04(f) of the Agreement with respect to Swing Line Loans, all payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in the currency in which such Revolving Credit Loan was denominated and in Same Day Funds at the Administrative Agent’s Office for such currency. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranties and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Revolving Credit Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount, currency and maturity of its Revolving Credit Loans and payments with respect thereto.

[The Company][Holdings][HIL], for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[HERBALIFE INTERNATIONAL, INC.] [HERBALIFE LTD.]
[HERBALIFE INTERNATIONAL LUXEMBOURG S.Á.R.L.]

OR

[APPLICABLE DESIGNATED BORROWER]

By:

Name:

Title:

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Form of Note

FORM OF TERM A NOTE

FOR VALUE RECEIVED, the undersigned ("Holdings") hereby promises to pay to _____ or registered assigns (the "Lender"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of the Term A Loan made by the Lender to Holdings under that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), among the Company, Holdings, HIL, the Designated Borrowers from time to time party thereto, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

Holdings promises to pay interest on the unpaid principal amount of the Term A Loan made by the Lender from the date of such Term A Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to the Administrative Agent for the account of the Lender in Dollars and in Same Day Funds at the Administrative Agent's Office for Dollars. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Agreement.

This Note is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranties and is secured by the Collateral. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. The Term A Loan made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount, currency and maturity of its Term A Loan and payments with respect thereto.

Holdings, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

HERBALIFE LTD.

By: _____
Name: _____
Title: _____

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Form of Note

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, _____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement," the terms defined therein being used herein as therein defined), among Herbalife International, Inc., a Nevada corporation (the "Company"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("Holdings"), Herbalife International Luxembourg S.à.r.l., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL"), certain Subsidiaries of the Company party thereto (each a "Designated Borrower" and, together with the Company, Holdings and HIL, the "Borrowers" and, each a "Borrower"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the _____¹ of Holdings, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of Holdings, and that:

*[Use following paragraph 1 for fiscal **year-end** financial statements]*

1. Holdings has delivered the year-end audited financial statements required by Section 6.01(a) of the Agreement for the fiscal year of Holdings ended as of the above date, together with the opinion of an independent certified public accountant and a management's discussion and analysis of the financial condition and results of operations for such fiscal year, each as required by such section.

*[Use following paragraph 1 for fiscal **quarter-end** financial statements]*

1. Holdings has delivered the unaudited financial statements required by Section 6.01(b) of the Agreement for the fiscal quarter of Holdings ended as of the above date. Such financial statements fairly present the financial condition, results of operations and cash flows of Holdings and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the

¹ Chief executive officer, chief financial officer, treasurer or controller.

transactions and condition (financial or otherwise) of Holdings during the accounting period covered by such financial statements.

3. A review of the activities of the Borrowers during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period each Borrower performed and observed all its Obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned, as of the date of the enclosed financial statements, no Default has occurred and is continuing.]

--or--

[to the best knowledge of the undersigned, as of the date of the enclosed financial statements the Company is not in compliance with certain covenants or conditions and the following is a list of each such Default and its nature and status:]

4. The financial covenant analyses and information set forth on Schedules 1 and 2 attached hereto are true and accurate on and as of the date of this Certificate.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____, ____.

HERBALIFE LTD.

By: _____
Name: _____
Title: _____

SCHEDULE 1
to the Compliance Certificate
(\$ in 000’s)

I. Section 7.11 (a) – Consolidated Coverage Ratio.

A.	Consolidated EBITDA for four consecutive fiscal quarters ending on above date (“Subject Period”):	
1.	Consolidated Net Income for Subject Period:	\$ _____
2.	Consolidated Interest Expense for Subject Period:	\$ _____
3.	Provision for income taxes for Subject Period:	\$ _____
4.	Depreciation for Subject Period:	\$ _____
5.	Amortization expenses for Subject Period (including amortization of deferred fees and the accretion of original issue discount):	\$ _____
6.	All other noncash items subtracted in determining Consolidated Net Income (including any noncash charges and noncash equity based compensation expenses related to any grant of stock, stock options or other equity-based awards (including, without limitation, restricted stock units or stock appreciation rights) of Holdings or any of its Subsidiaries recorded under GAAP, noncash charges related to warrants or other derivative instruments classified as equity instruments that will result in equity settlements and not cash settlements, and noncash losses or charges related to impairment of goodwill and other intangible assets and excluding any noncash charge that results in an accrual of a reserve for cash charges in any future period) for Subject period:	\$ _____
7.	Nonrecurring expenses and charges for Subject Period:	\$ _____
8.	Fees and expenses incurred in connection with the incurrence, prepayment, amendment, or refinancing of Indebtedness (including in connection with (i) the negotiation and documentation of the Agreement and the other Loan Documents and any amendments or waivers thereof and (ii) the on-going compliance with the Agreement and the other Loan Documents) for Subject Period:	\$ _____

- | | | |
|-----|---|------------|
| 9. | aggregate amount of all noncash items, determined on a consolidated basis for Subject Period, to the extent such items were added in determining Consolidated Net Income: | \$ _____ |
| 10. | Consolidated EBITDA
(Lines I.A.1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 – 9): | \$ _____ |
| B. | Consolidated Interest Expense for Subject Period: | \$ _____ |
| C. | Aggregate amount of scheduled payments of principal made by Holdings and its Subsidiaries during Subject Period: | \$ _____ |
| D. | Consolidated Interest Coverage Ratio (Line I.A.10 ÷ (Line I.B + Line I.C): | _____ to 1 |

Minimum required: 4.00 to 1

II. Section 7.11 (b) – Consolidated Total Leverage Ratio.

- | | | |
|----|---|------------|
| A. | Consolidated Indebtedness of Holdings at Statement Date: | \$ _____ |
| B. | Consolidated EBITDA for Subject Period (Line I.A.10 above): | \$ _____ |
| C. | Consolidated Leverage Ratio (Line III.A ÷ Line III.B): | _____ to 1 |

Maximum permitted: 2.50 to 1

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]² Assignor identified in item 1 below ([the][each, an] “Assignor”) and [the][each]³ Assignee identified in item 2 below ([the][each, an] “Assignee”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]⁴ hereunder are several and not joint.]⁵ Capitalized terms used but not defined herein shall have the meanings given to them in the Amended and Restated Credit Agreement identified below (the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount[s] and percentage interest[s] identified below of all of such outstanding rights and obligations of [the Assignor][the respective Assignors] with respect to its Commitment and the Loans outstanding under the respective facilities identified below (including, without limitation, the Letters of Credit and the Swing Line Loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as [the][an] “Assigned Interest”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

² For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

³ For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

⁴ Select as appropriate.

⁵ Include bracketed language if there are either multiple Assignors or multiple Assignees.

1. Assignor[s]: _____

2. Assignee[s]: _____

[for each Assignee, indicate [Affiliate][Approved Fund] of [*identify Lender*]]

3. Borrowers: Herbalife International, Inc., Herbalife Ltd. And Herbalife International Luxembourg S.á.r.l.

4. Administrative Agent: Bank of America, N.A., as the administrative agent under the Credit Agreement

5. Credit Agreement: Amended and Restated Credit Agreement, dated as of July 26, 2012, among the Borrowers, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer, and Swing Line Lender

6. Assigned Interest[s]:

Assignor[s] 6	Assignee[s] 7	Facility Assigned	Aggregate Amount of Commitment for all Lenders ⁸	Amount of Commitment Assigned	Percentage Assigned of Commitment ⁹	CUSIP Number
			\$ _____	\$ _____	_____%	
			\$ _____	\$ _____	_____%	
			\$ _____	\$ _____	_____%	
			\$ _____	\$ _____	_____%	

7. [Trade Date]: _____]¹⁰

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

⁶ List each Assignor, as appropriate.

⁷ List each Assignee, as appropriate.

⁸ Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

⁹ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

¹⁰ To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: _____

Title: _____

ASSIGNEE

[NAME OF ASSIGNEE]

By: _____

Title: _____

[Consented to and] ¹¹ Accepted:

BANK OF AMERICA, N.A., as
Administrative Agent

By: _____

Title: _____

[Consented to:

BANK OF AMERICA, N.A., as
L/C Issuer and as Swing Line Lender

By: _____

Title:]¹² _____

¹¹ To be added only if the consent of the Administrative Agent is required by Section 10.06(b)(iii) of the Credit Agreement.

¹² To be included only for assignments under the Revolving Credit Facility.

[Consented to: 13

HERBALIFE LTD.,
as Holdings

By: _____
Title:

HERBALIFE INTERNATIONAL, INC.,
as the Company

By: _____
Title:

HERBALIFE INTERNATIONAL LUXEMBOURG
S.Á.R.L., as a Borrower

By: _____
Title:]

¹³ To be added only if the consent of the Borrowers is required by Section 10.06(b)(iii) of the Credit Agreement.

**STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. Assignor. [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrowers, any of their respective Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrowers, any of their respective Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. [The][Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under Section 10.06(b)(iii), (v), and (vi) of the Credit Agreement (subject to such consents, if any, as may be required under Section 10.06(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 6.01(a) or (b) thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will

perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

FORM OF ADMINISTRATIVE QUESTIONNAIRE

[To be attached.]

E-2-1

FORM OF DESIGNATED BORROWER
REQUEST AND ASSUMPTION AGREEMENT

Date: _____, _____

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

This Designated Borrower Request and Assumption Agreement is made and delivered pursuant to Section 2.14 of that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), among Herbalife International, Inc., a Nevada corporation (the "Company"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("Holdings"), Herbalife International Luxembourg S.á.r.l., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL"), and collectively with the Company, Holdings and the Designated Borrowers from time to time party thereto, the "Borrowers" and, each a "Borrower", the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender, and reference is made thereto for full particulars of the matters described therein. All capitalized terms used in this Designated Borrower Request and Assumption Agreement and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

Each of _____ (the "Designated Borrower") and each Borrower hereby confirms, represents and warrants to the Administrative Agent and the Lenders that the Designated Borrower is a Subsidiary of Holdings.

The documents required to be delivered to the Administrative Agent under Section 2.14 of the Credit Agreement will be furnished to the Administrative Agent in accordance with the requirements of the Credit Agreement.

Complete if the Designated Borrower is a Domestic Subsidiary: The true and correct U.S. taxpayer identification number of the Designated Borrower is _____.

Complete if the Designated Borrower is a Foreign Subsidiary: The true and correct unique identification number that has been issued to the Designated Borrower by its jurisdiction of organization and the name of such jurisdiction are set forth below:

Identification Number	Jurisdiction of Organization

The parties hereto hereby confirm that with effect from the date of the Designated Borrower Notice for the Designated Borrower, the Designated Borrower shall have obligations, duties and liabilities toward each of the other parties to the Credit Agreement identical to those which the Designated Borrower would have had if the Designated Borrower had been an original party to the Credit Agreement as a Borrower. Effective as of the date of the Designated Borrower Notice for the Designated Borrower, the Designated Borrower confirms its acceptance of, and consents to, all representations and warranties, covenants, and other terms and provisions of the Credit Agreement.

The parties hereto hereby request that the Designated Borrower be entitled to receive Revolving Credit Loans under the Credit Agreement, and understand, acknowledge and agree that neither the Designated Borrower nor the Company on its behalf shall have any right to request any Loans for its account unless and until the date five Business Days after the effective date designated by the Administrative Agent in a Designated Borrower Notice delivered to the Company and the Lenders pursuant to Section 2.14 of the Credit Agreement.

This Designated Borrower Request and Assumption Agreement shall constitute a Loan Document under the Credit Agreement.

THIS DESIGNATED BORROWER REQUEST AND ASSUMPTION AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

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

[DESIGNATED BORROWER]

By: _____
Title: _____

HERBALIFE LTD., as a Borrower

By: _____
Title: _____

HERBALIFE INTERNATIONAL, INC., as a Borrower

By: _____
Title: _____

HERBALIFE INTERNATIONAL LUXEMBOURG S.Á.R.L., as a Borrower

By: _____
Title: _____

FORM OF DESIGNATED BORROWER NOTICE

Date: _____, _____

To: Herbalife International, Inc., Herbalife Ltd. and Herbalife International Luxembourg S.á.r.l.

The Lenders party to the Credit Agreement referred to below

Ladies and Gentlemen:

This Designated Borrower Notice is made and delivered pursuant to Section 2.14 of that certain Amended and Restated Credit Agreement, dated as of July 26, 2012 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"), among Herbalife International, Inc., a Nevada corporation (the "Company"), Herbalife Ltd., a Cayman Islands exempted company with limited liability ("Holdings"), Herbalife International Luxembourg S.á.r.l., a Luxembourg private limited liability company, having its registered office at 16, avenue de la Gare, L-1610 Luxembourg, having a share capital of EUR 25,000, registered with the Luxembourg trade and companies register under number B 88.006 ("HIL"), and collectively with the Company, Holdings and the Designated Borrowers from time to time party thereto, the "Borrowers" and, each a "Borrower", the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent, L/C Issuer and Swing Line Lender, and reference is made thereto for full particulars of the matters described therein. All capitalized terms used in this Designated Borrower Notice and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

The Administrative Agent hereby notifies Company and the Lenders that effective as of the date hereof [] shall be a Designated Borrower and may receive Loans for its account on the terms and conditions set forth in the Credit Agreement.

This Designated Borrower Notice shall constitute a Loan Document under the Credit Agreement.

BANK OF AMERICA, N.A.,
as Administrative Agent

By: _____
Title: _____

**HERBALIFE LTD.
2014 STOCK INCENTIVE PLAN
STOCK UNIT AWARD AGREEMENT
(Performance-Vesting)**

This Stock Unit Award Agreement (this "Agreement") is dated as of this 6th day of June, 2017 (the "Grant Date"), and is between Herbalife Ltd. (the "Company") and Richard P. Goudis ("Participant").

WHEREAS, the Company, by action of the Board and approval of its shareholders established the Herbalife Ltd. 2014 Stock Incentive Plan, as amended to date (the "Plan");

WHEREAS, Participant is employed by the Company or one or more of its Subsidiaries and the Company desires to encourage Participant to own Common Stock for the purposes stated in Section 1 of the Plan;

WHEREAS, Participant and the Company have entered into this Agreement to govern the terms of the Stock Unit Award (as defined below) granted to Participant by the Company; and

WHEREAS, certain capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in the Plan.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Grant.

(a) The Company hereby grants to Participant a target Award of 45,805 performance-vesting Stock Units (the "Award") in accordance with Section 10 of the Plan and subject to the conditions set forth in this Agreement and the Plan (as amended from time to time). Each Stock Unit represents the right to receive one share of Common Stock (as adjusted from time to time pursuant to Section 15 of the Plan) subject to the fulfillment of the vesting and other conditions set forth in this Agreement. By accepting the Award, Participant irrevocably agrees on behalf of Participant and Participant's successors and permitted assigns to all of the terms and conditions of the Award as set forth in or pursuant to this Agreement and the Plan (as such Plan may be amended from time to time).

(b) Except as otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Plan.

2. Vesting.

(a) Participant's Stock Units and rights in and to the Common Stock subject to the Stock Units shall not be vested as of the Grant Date and shall be forfeitable unless and until otherwise vested pursuant to the terms of this Agreement. The Participant shall be eligible to earn up to 200% of the Award on December 31, 2019 (such date, the "Vesting Date"), subject to satisfaction of the following conditions:

(i) The Company's achievement of the performance targets set by the Committee (please see Exhibit A attached hereto) (the "Performance Targets"). The percentage of the Award that will become vested (subject to the service condition set forth immediately below) shall be determined in accordance with Exhibit A attached hereto. The Committee will determine and certify the results of the level of achievement of the Performance Targets and the associated number of Stock Units that shall vest.

(ii) The Participant's continued employment with the Company and/or its subsidiaries or affiliates through the Vesting Date.

Stock Units that have vested and are no longer subject to forfeiture are referred to herein as "Vested Units." Stock Units that are not vested and remain subject to forfeiture are referred to herein as "Unvested Units."

(b) Section 15 of the Plan shall govern the treatment of this Award upon a Change in Control.

3. Settlement of Restricted Stock Units.

(a) Each Vested Unit will be settled by the delivery of one share of Common Stock (subject to adjustment under Section 15 of the Plan) to Participant or, in the event of Participant's death, to Participant's estate, heir or beneficiary, no later than thirty (30) days following the date that the Committee certifies the achievement of the Performance Targets and the resulting number of Vested Units (and in no event later than March 15 of the calendar year following the calendar year in which the Vesting Date occurs); provided that the Participant has satisfied all of the tax withholding obligations described in Paragraph 7, and that Participant has completed, signed and returned any documents and taken any additional action that the Company deems appropriate to enable it to accomplish the delivery of the Common Stock.

(b) The issuance of the Common Stock hereunder may be effected by the issuance of a stock certificate, recording shares on the stock records of the Company or by crediting shares in an account established on Participant's behalf with a brokerage firm or other custodian, in each case as determined by the Company. Fractional shares will not be issued pursuant to the Award.

(c) Notwithstanding the above, (i) for administrative or other reasons, the Company may from time to time temporarily suspend the issuance of Common Stock in respect of Vested Units, (ii) the Company shall not be obligated to deliver any shares of Common Stock during any period when the Company determines that the delivery of shares hereunder would violate any federal, state or other applicable laws, (iii) the Company may issue Common Stock hereunder subject to any restrictive legends that, as determined by the Company's counsel, are necessary to comply with securities or other regulatory requirements and (iv) the date on which shares are issued hereunder may include a delay in order to provide the Company such time as it determines appropriate to address tax withholding and other administrative matters.

4. Shareholder Rights. Prior to any issuance of Common Stock in settlement of the Award, no Common Stock will be reserved or earmarked for Participant or Participant's account nor shall Participant have any of the rights of a stockholder with respect to such Common Stock. Except as set forth in Paragraph 5, the Participant will not be entitled to any privileges of ownership of the Common Stock (including, without limitation, any voting rights) underlying Vested Units and/or Unvested Units unless and until Common Stock are actually delivered to Participant hereunder.

5. Dividend Equivalent Rights. From and after the Grant Date and unless and until the Award is forfeited or otherwise transferred back to the Company, Participant will be credited with additional Stock Units having a value equal to dividends declared by the Company, if any, with record dates that occur prior to the settlement of the Award as if the Common Stock underlying the Award had been issued and outstanding, based on the Fair Market Value of a share of Common Stock on the applicable dividend payment date. Any such additional Stock Units shall be considered part of the Award and shall also be credited with additional Stock Units as dividends, if any, are declared, and shall be subject to the same restrictions and conditions as the Stock Units subject to the Award with respect to which they were credited (including, but not limited to, the forfeiture provisions set forth in Paragraph 6). Any fractional Stock Units credited with respect to any dividend declared by the Company will be paid to the Participant in cash without interest at such time as the Award is settled. Notwithstanding the foregoing, no such additional Stock Units will be credited with respect to any dividend declared by the Company in connection with which the Award is adjusted pursuant to Section 15 of the Plan.

6. Effect of Termination of Employment. Except as provided in the Plan, upon a termination of Participant's employment with the Company for any reason on or prior to the Vesting Date, the Unvested Units shall be forfeited by Participant and cancelled and surrendered to the Company without payment of any consideration to Participant.

7. Withholding Taxes.

(a) Participant is liable and responsible for all taxes owed in connection with the Award, regardless of any action the Company takes with respect to any tax withholding obligations that arise in connection with the Award. The Company does not make any representation or undertaking regarding the treatment of any tax withholding in connection with the grant, vesting or settlement of the Award or the subsequent sale of Common Stock issuable pursuant to the Award. The Company does not commit and is under no obligation to structure the Award to reduce or eliminate Participant's tax liability.

(b) Prior to any event in connection with the Award (e.g., vesting or payment in respect of the Award) that the Company determines may result in any domestic or foreign tax withholding obligation, whether national, federal, state or local, including any social tax obligation (the "Tax Withholding Obligation"), Participant is required to arrange for the satisfaction of the amount of such Tax Withholding Obligation in a manner acceptable to the Company. Notwithstanding the foregoing, these Tax Withholding Obligations will be satisfied by the Company withholding a number of Common Stock that would otherwise be

issued under this Award that the Company determines has a Fair Market Value sufficient to meet the Tax Withholding Obligations, unless Participant otherwise satisfies such Tax Withholding Obligations in a manner satisfactory to the Company.

8. Securities Law Compliance. Participant understands that the Company is under no obligation to register for resale the Common Stock issued upon settlement of the Award. The Company may impose such restrictions, conditions or limitations as it determines appropriate as to the timing and manner of any resales by Participant or other subsequent transfers by Participant of any Common Stock issued as a result of or under this Award, including without limitation (i) restrictions under an insider trading policy, (ii) restrictions that may be necessary in the absence of an effective registration statement under the Securities Act of 1933, as amended, covering the Award and/or the Common Stock underlying the Award and (iii) restrictions as to the use of a specified brokerage firm or other agent for such resales or other transfers. Any sale of the Common Stock must also comply with other applicable laws and regulations governing the sale of such shares.

9. Assignment or Transfer Prohibited. The Award (whether or not vested) may not be assigned or transferred otherwise than by will or by the laws of descent and distribution. Neither the Award nor any right hereunder shall be subject to attachment, execution or other similar process. In the event of any attempt by Participant to alienate, assign, pledge, hypothecate or otherwise dispose of the Award or any right hereunder, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Award by notice to Participant, and the Award shall thereupon become null and void.

10. Committee Authority. Any question concerning the interpretation of this Agreement or the Plan, any adjustments required to be made under this Agreement or the Plan, and any controversy that may arise under this Agreement or the Plan shall be determined by the Committee in its sole and absolute discretion. All decisions by the Committee shall be final and binding.

11. Application of the Plan. The terms of this Agreement are governed by the terms of the Plan, as it exists on the date of hereof and as the Plan is amended from time to time. In the event of any conflict between the provisions of this Agreement and the provisions of the Plan, the terms of the Plan shall control, except as expressly stated otherwise herein. As used herein, the term "Section" generally refers to provisions within the Plan, and the term "Paragraph" refers to provisions of this Agreement.

12. No Right to Continued Employment. Nothing in the Plan, in this Agreement or any other instrument executed pursuant thereto or hereto shall confer upon Participant any right to continued employment with the Company or any of its Subsidiaries or affiliates.

13. Further Assurances. Each party hereto shall cooperate with each other party, shall do and perform or cause to be done and performed all further acts and things, and shall execute and deliver all other agreements, certificates, instruments, and documents as any other party hereto reasonably may request in order to carry out the intent and accomplish the purposes of this Agreement and the Plan.

14. Entire Agreement. This Agreement and the Plan together set forth the entire agreement and understanding between the parties as to the subject matter hereof and supersede all prior oral and written and all contemporaneous or subsequent oral discussions, agreements and understandings of any kind or nature.

15. Successors and Assigns. The provisions of this Agreement will inure to the benefit of, and be binding on, the Company and its successors and assigns and Participant and Participant's legal representatives, heirs, legatees, distributees, assigns and transferees by operation of law, whether or not any such person will have become a party to this Agreement and agreed in writing to join herein and be bound by the terms and conditions hereof.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

HERBALIFE LTD.

/s/ Richard P. Goudis

Richard P. Goudis

By: /s/ John G. DeSimone

Name: John G. DeSimone
Title: Chief Financial Officer

Section 302 Certification

I, Richard P. Goudis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Herbalife Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ RICHARD P. GOUDIS
Richard P. Goudis
Chief Executive Officer

Dated: August 1, 2017

Section 302 Certification

I, John G. DeSimone, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Herbalife Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

By: /s/ JOHN G. DESIMONE
John G. DeSimone
Chief Financial Officer

Dated: August 1, 2017

CERTIFICATION
Pursuant to 18 U.S.C. Section 1350
Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Quarterly Report of Herbalife Ltd., or the Company, on Form 10-Q for the fiscal quarter ended June 30, 2017 as filed with the U.S. Securities and Exchange Commission on the date hereof, or the Report, and pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned officers of the Company certifies that:

- the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ RICHARD P. GOUDIS
Richard P. Goudis
Chief Executive Officer

Dated: August 1, 2017

By: /s/ JOHN G. DESIMONE
John G. DeSimone
Chief Financial Officer

Dated: August 1, 2017

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.