



**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549  
**Form S-3**  
**REGISTRATION STATEMENT**  
**UNDER**  
**THE SECURITIES ACT OF 1933**

**BIOGEN IDEC INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or organization)

**33-0112644**  
(I.R.S. Employer Identification No.)

**14 Cambridge Center, Cambridge, MA 02142**

(617) 679-2000

(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)

Susan H. Alexander, Esq.  
Executive Vice President, General Counsel and Secretary

Biogen Idec Inc.  
14 Cambridge Center  
Cambridge, Massachusetts 02142

(617) 679-2000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Keith F. Higgins  
Ropes & Gray LLP  
One International Place  
Boston, Massachusetts 02110  
Telephone: (617) 951-7000  
Fax: (617) 951-7050

Robert Mandell  
Sidley Austin LLP  
787 Seventh Avenue  
New York, New York 10019  
Telephone: (212) 839-5300  
Fax: (212) 839-5599

**Approximate Date of Commencement of Proposed Sale of the Securities to the Public:** From time to time after the effective date of this Registration Statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Debt Securities	(1)	(1)	(1)	(1)

- (1) An indeterminate aggregate initial offering price and amount of debt securities is being registered as may from time to time be offered at indeterminate prices. In accordance with Rules 456(b) and 457(r) under the Securities Act, the registrant is deferring payment of all of the Securities Act registration fee and will pay such registration fee subsequently in advance or on a pay-as-you-go basis.

**Prospectus**



**Debt Securities**

Biogen Idec Inc. may offer debt securities from time to time, in one or more offerings. The terms of the debt securities will be described in a prospectus supplement, together with other terms and matters related to the offering. You should read carefully both this prospectus and any prospectus supplement before making your investment decision.

We may offer and sell the debt securities on an immediate, continuous or delayed basis directly to investors or through underwriters, dealers or agents, or through a combination of these methods.

---

**Investing in these securities involves certain risks. See “Item 1A. Risk Factors” in our most recent Annual Report on Form 10-K incorporated by reference in this prospectus, and in any applicable prospectus supplement, for a discussion of the factors you should consider carefully before deciding to purchase these securities.**

---

The address of our principal executive offices is 14 Cambridge Center, Cambridge, Massachusetts 02142 and our telephone number at our principal executive offices is (617) 679-2000.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is February 26, 2008.

---

## Table of Contents

<a href="#"><u>About this Prospectus</u></a>	2
<a href="#"><u>Where You Can Find More Information About Us</u></a>	2
<a href="#"><u>Use of Proceeds</u></a>	3
<a href="#"><u>Ratio of Earnings to Fixed Charges</u></a>	3
<a href="#"><u>Plan of Distribution</u></a>	3
<a href="#"><u>Validity of Notes</u></a>	5
<a href="#"><u>Experts</u></a>	5

---

#### **ABOUT THIS PROSPECTUS**

Each time we offer debt securities using this prospectus, we will provide specific terms and offering prices in supplements to this prospectus. The prospectus supplements also may add, update or change the information in this prospectus and also will describe the specific manner in which we will offer these securities.

The particular prospectus supplement also may contain important information about U.S. federal income tax consequences and, in certain circumstances, consequences under other countries' tax laws to which you may become subject if you acquire the debt securities being offered by that prospectus supplement. The prospectus supplement also may update or change information contained or incorporated by reference in this prospectus. You should read carefully both this prospectus and any prospectus supplement together with the additional information described under the heading "Where You Can Find More Information About Us."

#### **WHERE YOU CAN FIND MORE INFORMATION ABOUT US**

We file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any materials that we file with the SEC at its Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at (800) 732-0330. Our filings are also available to the public from the Internet website maintained by the SEC at <http://www.sec.gov>.

We incorporate by reference into this prospectus the documents listed below and any future filings made by us with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"):

- our Annual Report on Form 10-K, filed on February 14, 2008, for the year ended December 31, 2007; and
- our Current Reports on Form 8-K, filed on January 11, 2008, January 28, 2008 and February 15, 2008.

You may obtain documents incorporated by reference into this prospectus at no cost by requesting them in writing or telephoning us at the following address:

Biogen Idec Inc.  
Attn: Investor Relations  
14 Cambridge Center  
Cambridge, Massachusetts 02142  
(617) 679-2812

Copies of these filings are also available, without charge, on our website at <http://www.biogenidec.com>. The other contents of our website have not been, and shall not be deemed to be, incorporated by reference into this prospectus.

Any statement contained in this prospectus or in a document incorporated by reference herein will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or therein, or in any other subsequently filed document that also is incorporated herein or therein by reference, modifies or supersedes such statement. Any such statement so modified or superseded will not be deemed to constitute a part of this prospectus except as so modified or superseded.

This prospectus constitutes a part of a registration statement on Form S-3 (referred to herein, including all amendments and exhibits, as the "Registration Statement") that we have filed with the SEC under the Securities Act of 1933, as amended (the "Securities Act"). This prospectus does not contain all of the information contained in the Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. We refer you to the Registration Statement and related exhibits for further information regarding us and our debt securities. The Registration Statement may be inspected at the public reference facilities maintained by the SEC at the address set forth above or from the SEC's web site at <http://www.sec.gov>. Statements contained in this prospectus, any prospectus supplement or in a document

## [Table of Contents](#)

incorporated or deemed to be incorporated by reference herein concerning the provisions of any document filed as an exhibit to the Registration Statement are not necessarily complete and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement or otherwise filed with the SEC. Each such statement is qualified in its entirety by such reference.

### **USE OF PROCEEDS**

Unless otherwise indicated in a prospectus supplement, we will use all or a portion of the net proceeds from the sale of our debt securities offered by this prospectus and an accompanying prospectus supplement for general corporate and working capital purposes. General corporate and working capital purposes may include repayment of debt, capital expenditures, possible acquisitions and any other purposes that may be stated in any prospectus supplement. The net proceeds may be invested temporarily or applied to repay short-term or revolving debt until they are used for their stated purpose.

A portion of the proceeds may be used to discharge indebtedness incurred under a senior term loan facility in connection with our issuer tender offer that was completed July 2, 2007. The interest rate on the senior term loan is LIBOR plus 45 basis points, which was 5.54% at December 31, 2007, and it matures on June 26, 2008.

### **RATIO OF EARNINGS TO FIXED CHARGES**

Our consolidated ratios of earnings to fixed charges for each of the periods indicated are as follows:

Ratio of Earnings to Fixed Charges (1)	<b>Years Ended December 31,</b>				
	<b>2007</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>
	15.74	43.77	9.64	2.40	(2)

- (1) We have computed the ratios of earnings to fixed charges by dividing pre-tax income from continuing operations, plus fixed charges, plus amortization of capitalized interest, less earnings of equity investees, less interest capitalized, by fixed charges. Fixed charges consist of interest costs, whether expensed or capitalized, the interest component of rental expense and any amortization of debt premiums, discounts and issuance costs. The percent of rent included in the calculations is a reasonable approximation of the interest factor.
- (2) The ratio of earnings to fixed charges is not presented for the year ended December 31, 2003 because our earnings were a net loss of \$887.4 million primarily due to the recording of an in-process research and development expense of \$823.0 million in connection with the merger of Biogen Inc. and Idec Pharmaceuticals Inc.

### **PLAN OF DISTRIBUTION**

#### **General**

The debt securities may be sold:

- to or through underwriting syndicates represented by managing underwriters;
- to or through one or more underwriters without a syndicate;
- through dealers or agents; or
- to investors directly in negotiated sales or in competitively bid transactions.

The prospectus supplement for each series of debt securities we sell will describe, to the extent required, information with respect to that offering, including:

- the name or names of any underwriters and the respective amounts underwritten;
- the purchase price and the proceeds to us from that sale;

## [Table of Contents](#)

- any underwriting discounts and other items constituting underwriters' compensation;
- any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers;
- any securities exchanges on which the securities may be listed; and
- any material relationships with the underwriters.

### **Underwriters**

If underwriters are used in the sale, we will execute an underwriting agreement with those underwriters relating to the debt securities that we will offer. Unless otherwise set forth in the applicable prospectus supplement, the obligations of the underwriters to purchase these debt securities will be subject to conditions, and the underwriters will be obligated to purchase all of these debt securities if any are purchased.

The debt securities subject to any underwriting agreement will be acquired by the underwriters for their own account and may be resold by them from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may be deemed to have received compensation from us in the form of underwriting discounts or commissions and may also receive commissions from the purchasers of these debt securities for whom they may act as agent. Underwriters may sell these debt securities to or through dealers. These dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agent. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

### **Agents**

We may also sell any of the debt securities through agents designated by us from time to time. We will name any agent involved in the offer or sale of these debt securities and will list commissions payable by us to these agents in the applicable prospectus supplement. Any agents will be acting on a best efforts basis to solicit purchases for the period of its appointment, unless we state otherwise in the applicable prospectus supplement.

### **Direct sales**

We may sell any of the debt securities directly to purchasers. In this case, we will not engage underwriters or agents in the offer and sale of the applicable securities.

### **Indemnification**

We may indemnify underwriters, dealers or agents who participate in the distribution of debt securities against certain liabilities, including liabilities under the Securities Act, and agree to contribute to payments which these underwriters, dealers or agents may be required to make.

### **No assurance of liquidity**

The debt securities registered hereby may be a new issue of debt securities with no established trading market. Any underwriters that purchase debt securities from us may make a market in these debt securities. The underwriters will not be obligated, however, to make a market and may discontinue market-making at any time without notice to holders of the debt securities. We cannot assure you that there will be liquidity in the trading market for any debt securities of any series.

[Table of Contents](#)

**VALIDITY OF NOTES**

The validity of the notes offered by this prospectus and any prospectus supplement will be passed upon for us by Ropes & Gray LLP, Boston, Massachusetts and for the underwriters by Sidley Austin LLP, New York, New York.

**EXPERTS**

The consolidated financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Annual Report on Internal Control over Financial Reporting) incorporated in this prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2007 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution\***

The following table sets forth all fees and expenses payable by the registrant in connection with the issuance and distribution of the debt securities being registered hereby (other than underwriting discounts and commissions).

	Estimated Amounts	(1)
Securities and Exchange Commission registration fee under the Securities Act	\$	(1)
Printing and engraving expenses	\$	20,000
Legal fees and expenses	\$	475,000
Rating agency fees	\$	999,000
Accountants' fees and expenses	\$	175,000
Trustee fees and expenses	\$	7,500
Total	\$	1,676,500(1)

\* All fees and expenses are estimated. All of the above fees and expenses will be borne by the Company.

(1) Securities Act registration fee deferred in accordance with Rules 456(b) and 457(r) under the Securities Act.

**Item 15. Indemnification of Directors and Officers**

Article Ten of the Company's Amended and Restated Certificate of Incorporation, as amended, provides for the elimination of personal monetary liabilities of directors of the Company for any breach of their fiduciary duties to the full extent permitted by the General Corporation Law of Delaware (the "GCL"). Section 102(b)(7) of the GCL enables a corporation in its certificate of incorporation to eliminate or limit the personal liability of members of its board of directors to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, provided that the corporation shall not eliminate or limit the liability of a director for: (i) breaching his or her duty of loyalty; (ii) failing to act in good faith, engaging in intentional misconduct or knowingly violating the law; (iii) paying an unlawful dividend or approving an illegal stock repurchase; or (iv) obtaining an improper personal benefit.

Section 145 of the GCL provides that a corporation may indemnify directors and officers as well as other employees and agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation — a "derivative action"), if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action, and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. Indemnification provided pursuant to Section 145 is not exclusive of any other rights to which those seeking indemnification may be entitled to under any bylaw, agreement, disinterested director vote, stockholder vote or otherwise.

The Company's Amended and Restated By-laws provide that the Company shall provide, to the fullest extent authorized by the GCL, indemnification against all expense, liability and loss reasonably incurred by its directors, officers, or any other person who is or was serving at the request of the corporation as a director, officer, employee or agent of another related entity and shall advance expenses to such persons, in respect of any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact

[Table of Contents](#)

that he or she is or was serving in such capacity. In addition, the Company maintains directors' and officers' liability insurance which insures against certain liabilities that directors or officers of the Company may incur in such capacities.

The Company also has in place agreements with certain of its officers and directors which affirm the Company's obligation to indemnify them to the fullest extent permitted by law and contain various procedural and other provisions which expand the protection afforded by the Company's by-laws.

**Item 16. Exhibits**

A list of exhibits filed herewith or incorporated by reference is contained in the Index to Exhibits beginning on page E-1, which is incorporated herein by reference.

**Item 17. Undertakings**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however,* that paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act, to any purchaser:

(i) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to

Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act, shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at the date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which the prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act, to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

- (i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
- (ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
- (iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
- (iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby further undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of any employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

**SIGNATURES AND POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Cambridge, Commonwealth of Massachusetts, on February 26, 2008.

BIOGEN IDEC INC.

By: /s/ JAMES C. MULLEN  
Name: James C. Mullen  
Title: Chief Executive Officer and President

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities indicated on February 26, 2008.

Further, we, the undersigned officers and directors of the Company hereby severally constitute and appoint James C. Mullen, Michael F. Phelps, and Susan H. Alexander and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities as indicated, any and all amendments or supplements to this Registration Statement on Form S-3 of the Company, including post-effective amendments to the Registration Statement and generally to do all such things in connection therewith in our name and on our behalf in our capacities as indicated to enable the Company to comply with the provisions of the Securities Act and all requirements of the SEC, hereby ratifying and confirming our signatures as they may be signed by our said attorneys or any of them, to any and all amendments.

Name	Capacity
<u>/s/ JAMES C. MULLEN</u> James C. Mullen	Director, Chief Executive Officer and President (principal executive officer)
<u>/s/ PAUL J. CLANCY</u> Paul J. Clancy	Executive Vice President, Finance and Chief Financial Officer (principal financial officer)
<u>/s/ MICHAEL F. MACLEAN</u> Michael F. MacLean	Senior Vice President, Chief Accounting Officer and Controller (principal accounting officer)
<u>/s/ BRUCE R. ROSS</u> Bruce R. Ross	Director, Chairman of the Board of Directors
<u>/s/ LAWRENCE C. BEST</u> Lawrence C. Best	Director
<u>/s/ MARIJN E. DEKKERS</u> Marijn E. Dekkers	Director
<u>/s/ ALAN B. GLASSBERG</u> Alan B. Glassberg, M.D.	Director

[Table of Contents](#)

<u>Name</u>	<u>Capacity</u>
/s/ THOMAS F. KELLER Thomas F. Keller, Ph.D.	Director
/s/ NANCY L. LEAMING Nancy L. Leaming	Director
/s/ ROBERT W. PANGIA Robert W. Pangia	Director
/s/ CECIL B. PICKETT Cecil B. Pickett, Ph.D.	Director
/s/ LYNN SCHENK Lynn Schenk	Director
/s/ PHILLIP A. SHARP Phillip A. Sharp, Ph.D.	Director
/s/ WILLIAM D. YOUNG William D. Young	Director

[Table of Contents](#)

**INDEX TO EXHIBITS**

<u>Exhibit Number</u>	<u>Description</u>
1.1	Underwriting Agreement*
4.1	Indenture, dated as of February 26, 2008, between the Company and The Bank of New York Trust Company, N.A., filed herewith.
5.1	Opinion of Ropes & Gray LLP as to legality of the debt securities, filed herewith.
12.1	Computation of Ratio of Earnings to Fixed Charges, filed herewith.
23.1	Consent of PricewaterhouseCoopers LLP, an independent registered public accounting firm, filed herewith.
23.2	Consent of Ropes & Gray LLP (included in Exhibit 5.1).
24.1	Power of Attorney of Biogen Idee Inc. (included on signature pages to this Registration Statement).
25	Form T-1 Statement of Eligibility of Trustee under the Trust Indenture Act of 1939, as amended, of The Bank of New York Trust Company, N.A., as trustee, filed herewith.

\* To be filed subsequently on Form 8-K or by post-effective amendment.

**BIOGEN IDEC INC.**  
and  
**THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee**  
**INDENTURE**  
Debt Securities  
Dated as of February 26, 2008

---

**CROSS-REFERENCE TABLE**

TIA SECTION	INDENTURE SECTION
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N/A
(a)(4)	N/A
(a)(5)	7.10
(b)	7.8; 7.10; 10.4
(b)(1)	7.10
(b)(9)	7.10
311(a)	7.11
(b)	7.11
312(a)	2.6
(b)	10.3
(c)	10.3
313(a)	7.6
(b)(1)	7.6
(b)(2)	7.6
(c)	7.6; 10.4
(d)	7.6
314(a)	4.2; 4.4; 10.4
(b)	N/A
(c)(1)	10.4; 10.5
(c)(2)	10.4; 10.5
(c)(3)	N/A
(d)	N/A
(e)	10.5
(f)	N/A
315(a)	7.1, 7.2
(b)	7.5; 10.2
(c)	7.1
(d)	6.5; 7.1; 7.2
(e)	6.11
316(a)(last sentence)	2.10
(a)(1)(A)	6.5
(a)(1)(B)	6.4
(a)(2)	8.2
(b)	6.7
(c)	8.4
317(a)(1)	6.8
(a)(2)	6.9
(b)	2.5; 7.12
318(a)	10.1

---

N/A means not applicable

Note: This Cross-Reference Table shall not, for any purpose, be deemed to be a part of the Indenture.

## TABLE OF CONTENTS

PAGE

	<b>ARTICLE 1</b>	PAGE
	DEFINITIONS AND INCORPORATION BY REFERENCE	
Section 1.1 <i>Definitions</i>		1
Section 1.2. <i>Other Definitions</i>		5
Section 1.3. <i>Incorporation by Reference of Trust Indenture Act</i>		5
Section 1.4. <i>Rules of Construction</i>		6
 <b>ARTICLE 2</b> THE SECURITIES		
Section 2.1 <i>Issuable in Series</i>		6
Section 2.2 <i>Establishment of Terms of Series of Securities</i>		7
Section 2.3 <i>Execution and Authentication</i>		9
Section 2.4 <i>Registrar and Paying Agent</i>		10
Section 2.5 <i>Paying Agent to Hold Assets in Trust</i>		11
Section 2.6 <i>Securityholder Lists</i>		11
Section 2.7 <i>Transfer and Exchange</i>		11
Section 2.8 <i>Replacement Securities</i>		12
Section 2.9 <i>Outstanding Securities</i>		12
Section 2.10 <i>When Treasury Securities Disregarded; Determination Of Holders' Action</i>		13
Section 2.11. <i>Temporary Securities</i>		13
Section 2.12. <i>Cancellation</i>		13
Section 2.13. <i>Payment of Interest; Defaulted Interest; Computation of Interest</i>		14
Section 2.14. <i>CUSIP Number</i>		14
Section 2.15. <i>Provisions For Global Securities</i>		15
Section 2.16. <i>Persons Deemed Owners</i>		15
 <b>ARTICLE 3</b> REDEMPTION		
Section 3.1. <i>Notices to Trustee</i>		16
Section 3.2. <i>Selection by Trustee of Securities to be Redeemed</i>		16
Section 3.3. <i>Notice of Redemption</i>		17
Section 3.4. <i>Effect of Notice of Redemption</i>		18
Section 3.5. <i>Deposit of Redemption Price</i>		18
Section 3.6. <i>Securities Redeemed In Part</i>		19
 <b>ARTICLE 4</b> COVENANTS		
Section 4.1. <i>Payment of Securities</i>		19
Section 4.2. <i>SEC Reports</i>		19

PAGE
20
20
21
21

Section 4.3. Maintenance of Office or Agency
Section 4.4. Compliance Certificate
Section 4.5. Corporate Existence
Section 4.6. Waiver of Certain Covenants

ARTICLE 5  
SUCCESSOR CORPORATION

Section 5.1. Limitation on Consolidation, Merger and Sale of Assets
Section 5.2. Successor Person Substituted
21
22

ARTICLE 6  
DEFAULTS AND REMEDIES

Section 6.1. Events of Default
Section 6.2. Acceleration
Section 6.3. Remedies
Section 6.4. Waiver of Past Defaults and Events of Default
Section 6.5. Control By Majority
Section 6.6. Limitation On Suits
Section 6.7. Rights of Holders to Receive Payment
Section 6.8. Collection Suit By Trustee
Section 6.9. Trustee May File Proofs of Claim
Section 6.10. Priorities
Section 6.11. Undertaking for Costs
Section 6.12. Waiver of Stay, Extension or Usury Laws
22
24
24
24
25
25
25
26
26
26
27
27
27

ARTICLE 7  
TRUSTEE

Section 7.1. Duties of Trustee
Section 7.2. Rights of Trustee
Section 7.3. Individual Rights of Trustee
Section 7.4. Trustee's Disclaimer
Section 7.5. Notice of Default
Section 7.6. Reports By Trustee To Holders
Section 7.7. Compensation And Indemnity
Section 7.8. Replacement of Trustee
Section 7.9. Successor Trustee By Consolidation, Merger or Conversion
Section 7.10. Eligibility; Disqualification
Section 7.11. Preferential Collection of Claims Against Company
Section 7.12. Paying Agents
28
29
30
30
30
30
30
31
31
32
32
33
33

ARTICLE 8  
AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.1. <i>Without Consent of Holders</i>	33
Section 8.2. <i>With Consent of Holders</i>	34
Section 8.3. <i>Compliance With Trust Indenture Act</i>	35
Section 8.4. <i>Revocation And Effect Of Consents</i>	36
Section 8.5. <i>Notation on or Exchange of Securities</i>	36
Section 8.6. <i>Trustee To Sign Amendments, Etc.</i>	36

ARTICLE 9  
DISCHARGE OF INDENTURE; DEFEASANCE

Section 9.1. <i>Discharge of Indenture</i>	37
Section 9.2. <i>Legal Defeasance</i>	37
Section 9.3. <i>Covenant Defeasance</i>	38
Section 9.4. <i>Conditions to Legal Defeasance or Covenant Defeasance</i>	38
Section 9.5. <i>Deposited Money and U.S. and Foreign Government Obligations to be Held in Trust; Other Miscellaneous Provisions</i>	40
Section 9.6. <i>Reinstatement</i>	40
Section 9.7. <i>Moneys Held By Paying Agent</i>	40
Section 9.8. <i>Moneys Held By Trustee</i>	41

ARTICLE 10  
MISCELLANEOUS

Section 10.1. <i>Trust Indenture Act Controls</i>	41
Section 10.2. <i>Notices</i>	42
Section 10.3. <i>Communications by Holders with Other Holders</i>	43
Section 10.4. <i>Certificate And Opinion As To Conditions Precedent</i>	43
Section 10.5. <i>Statement Required In Certificate and Opinion</i>	43
Section 10.6. <i>Rules by Trustee and Agents</i>	44
Section 10.7. <i>Business Days; Place of Payment</i>	44
Section 10.8. <i>Governing Law</i>	44
Section 10.9. <i>No Adverse Interpretation of Other Agreements</i>	44
Section 10.10. <i>No Recourse Against Others</i>	44
Section 10.11. <i>Successors</i>	44
Section 10.12. <i>Multiple Counterparts</i>	45
Section 10.13. <i>Table of Contents, Headings, Etc.</i>	45
Section 10.14. <i>Severability</i>	45
Section 10.15. <i>Securities In A Foreign Currency</i>	45
Section 10.16. <i>Judgment Currency</i>	46

-v-

---

INDENTURE, dated as of February 26, 2008, by and between Biogen Idec Inc., a Delaware corporation, as Issuer (the "Company"), and The Bank of New York Trust Company, N.A., a national association, as Trustee (the "Trustee").

#### **RECITALS OF THE COMPANY**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness to be issued in one or more series (the "Securities"), as herein provided, up to such principal amount as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors or by supplemental indenture.

All things necessary to make this Indenture a valid agreement of the Company in accordance with its terms have been done, and the execution and delivery thereof have been in all respects duly authorized by the parties hereto.

#### **NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities of a Series thereof, as follows:

#### **ARTICLE 1**

##### **DEFINITIONS AND INCORPORATION BY REFERENCE**

###### **Section 1.1. Definitions.**

"Affiliate" of any specified Person means any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

"Agent" means any Registrar, Paying Agent, co-registrar or agent for service of notices and demands.

"Board of Directors" means the Board of Directors of the Company or any committee duly authorized to act therefor.

"Board Resolution" means a copy of a resolution certified pursuant to an Officers' Certificate to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification and delivered to the Trustee.

"Capitalized Lease" means any obligation of a Person to pay rent or other amounts incurred with respect to real property or equipment acquired or leased by such Person and used

---

in its business that is required to be recorded as a capital lease in accordance with generally accepted accounting principles.

"Capital Stock" means, with respect to any Person, any and all shares or other equivalents (however designated) of capital stock, partnership interests or any other participation, right or other interest in the nature of an equity interest in such Person or any option, warrant or other security convertible into any of the foregoing.

"Commission" means the United States Securities and Exchange Commission as constituted from time to time or any successor performing substantially the same functions.

"Company" means the party named as such in the first paragraph of this Indenture until a successor replaces such party pursuant to Article 5 of this Indenture and thereafter means the successor and any other primary obligor on the Securities.

"Company Order" means a written order signed in the name of the Company by two Officers, one of whom must be its Chief Executive Officer or its Chief Financial Officer.

"Company Request" means any written request signed in the name of the Company by its Chief Executive Officer, its President, any Vice President, its Chief Financial Officer or its Treasurer and attested to by the Secretary or any Assistant Secretary of the Company.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date hereof is located at 601 Travis Street, 18th Floor, Houston, Texas 77002 or such other address as the Trustee may designate from time to time by notice to the Holders or the Company.

"Default" means any event that is, or with the passing of time or giving of notice or both would be, an Event of Default.

"Depository" means, with respect to the Securities of any Series issuable or issued in whole or in part in the form of one or more Global Securities, the Person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "Depository" shall mean each Person who is then a Depository hereunder, and if at any time there is more than one such Person, such Persons.

"Dollars" means the currency of the United States of America.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Foreign Currency" means any currency or currency unit issued by a government other than the government of the United States of America.

"Foreign Government Obligations" means with respect to Securities of any Series that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is

pledged or (ii) obligations of a Person controlled or supervised by or acting as an agency or instrumentality of such government the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) or (ii), are not callable or redeemable at the option of the issuer thereof.

"GAAP" means generally accepted accounting principles consistently applied as in effect in the United States from time to time.

"Global Security" or "Global Securities" means a Security or Securities, as the case may be, in the form established pursuant to Section 2.2, evidencing all or part of a Series of Securities issued to the Depositary for such Series or its nominee, and registered in the name of such Depositary or nominee, and bearing the legend set forth in Section 2.15(c) (or such legend as may be specified as contemplated by Section 2.2 for such Securities).

"Holder" or "Securityholder" means the Person in whose name a Security is registered on the Registrar's books.

"Indebtedness" of any Person means, without duplication (1) any obligation of such Person for money borrowed, (2) any obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, (3) any reimbursement obligation of such Person in respect of letters of credit or other similar instruments which support financial obligations which would otherwise become Indebtedness, and (4) any obligation of such Person under Capitalized Leases; *provided, however,* that "Indebtedness" of such Person shall not include any obligation of such Person to any Subsidiary of such Person or to any Person with respect to which such Person is a Subsidiary.

"Indenture" means this Indenture as amended, restated or supplemented from time to time.

"Interest Payment Date" when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Lien" means any pledge, mortgage, lien, encumbrance or other security interest.

"Maturity" when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity of the principal of such Security or by declaration of acceleration, call for redemption, notice of option to elect payment or otherwise.

"Officer" means the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Treasurer or the Secretary of the Company or any other officer designated by the Board of Directors, as the case may be.

"Officers' Certificate" means, with respect to any Person, a certificate signed by the Chairman, Chief Executive Officer, the President or any Senior or Executive Vice President, and the Chief Financial Officer or any Treasurer of such Person that shall comply with Section 314 of the TIA and with the applicable provisions of this Indenture.

"Opinion of Counsel" means a written opinion from legal counsel (which counsel is reasonably acceptable to the Trustee) which shall comply with Section 314 of the TIA. The counsel may be an employee of or counsel to the Company.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government (including any agency or political subdivision thereof).

"Redemption Date," when used with respect to any Security of a Series to be redeemed, means the date fixed for such redemption pursuant to this Indenture.

"Responsible Officer" when used with respect to the Trustee, means any officer within the corporate trust department or division of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Securities" means any of the securities that are executed, authenticated and issued under this Indenture.

"Securities Act" means the Securities Act of 1933, as amended.

"Series" or "Series of Securities" means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.1 or 2.2 hereof.

"Significant Subsidiary" means (i) any direct or indirect Subsidiary of the Company that would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof, or (ii) any group of direct or indirect Subsidiaries of the Company that, taken together as a group, would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

"Stated Maturity," when used with respect to any Security or any installment of principal thereof or interest thereon means, the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable, and when used with respect to any other Indebtedness, means the date specified in the instrument governing such Indebtedness as the fixed date on which the principal of such Indebtedness, or any installment of interest thereon, is due and payable.

"Subsidiary" of any specified Person means any corporation, limited liability company, partnership, joint venture, association or other business entity, whether now existing or hereafter organized or acquired, (i) in the case of a corporation, of which more than 50% of the total voting power of the Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors thereof is held, directly or indirectly by such Person or any of its Subsidiaries; or (ii) in the case of a partnership, joint venture, association or other business entity, with respect to which such Person or any of its Subsidiaries has the power to direct or cause the direction of the management and policies of such entity by contract or otherwise or if

in accordance with GAAP such entity is consolidated with such Person for financial statement purposes.

“TIA” means the Trust Indenture Act of 1939 (15 U.S. Code Section 77aaa-77bbbb) as in effect on the date of this Indenture (except as provided in Section 8.3 hereof).

“Trustee” means the party named as such in this Indenture until a successor replaces it pursuant to this Indenture and thereafter means the successor, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“U.S. Government Obligations” means direct non-callable obligations of, or non-callable obligations guaranteed by, the United States of America for the payment of which obligation or guarantee the full faith and credit of the United States of America is pledged.

**Section 1.2. Other Definitions.**

The definitions of the following terms may be found in the sections indicated as follows:

TERM	DEFINED IN SECTION
“Bankruptcy Law”	6.1
“Business Day”	10.7
“Covenant Defeasance”	9.3
“Custodian”	6.1
“Event of Default”	6.1
“Journal”	10.15
“Judgment Currency”	10.16
“Legal Defeasance”	9.2
“Legal Holiday”	10.7
“Market Exchange Rate”	10.15
“New York Banking Day”	10.16
“Paying Agent”	2.4
“Place of Payment”	10.7
“Registrar”	2.4
“Required Currency”	10.16
“Service Agent”	2.4

**Section 1.3. Incorporation by Reference of Trust Indenture Act.**

Whenever this Indenture refers to a provision of the TIA, the portion of such provision required to be incorporated herein in order for this Indenture to be qualified under the TIA is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“indenture securities” means the Securities.

“indenture securityholder” means a Holder or Securityholder.

"indenture to be qualified" means this Indenture.

"indenture trustee" or "institutional trustee" means the Trustee.

"obligor on the indenture securities" means the Company.

All other terms used in this Indenture that are defined by the TIA, defined in the TIA by reference to another statute or defined by Commission rule have the meanings therein assigned to them.

**Section 1.4. Rules of Construction.**

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it herein, whether defined expressly or by reference;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) "or" is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) words used herein implying any gender shall apply to each gender; and
- (6) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

**ARTICLE 2**  
**THE SECURITIES**

**Section 2.1. Issuable in Series.**

The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth in a Board Resolution, a supplemental indenture or an Officers' Certificate detailing the adoption of the terms thereof pursuant to the authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers' Certificate or supplemental indenture may provide for the method by which specified terms (such as interest rate, Stated Maturity, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, provided that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

**Section 2.2. Establishment of Terms of Series of Securities.**

At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.2(1) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.2(2) through 2.2(24)) by a Board Resolution, a supplemental indenture or an Officers' Certificate, in each case, pursuant to authority granted under a Board Resolution:

- (1) the title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- (2) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Section 2.7, 2.8, 2.11, 3.6 or 8.5);
- (3) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;
- (4) the date or dates on which the principal of the Securities of the Series is payable;
- (5) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any Interest Payment Date;
- (6) the place or places where the principal of and interest and premium, if any, on the Securities of the Series shall be payable, or the method of such payment, if by wire transfer, mail or other means;
- (7) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;
- (8) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (9) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof and other detailed terms and provisions of such repurchase obligations;

- (10) if other than denominations of \$2,000 and integral multiples of \$1,000 in excess thereof, the denominations in which the Securities of the Series shall be issuable;
- (11) whether the Securities of the Series are to be issued in bearer (if to be issued outside of the United States) or fully registered form (and, if in fully registered form, whether the Securities will be issuable as Global Securities);
- (12) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 6.2;
- (13) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, and if such currency of denomination is a composite currency, the agency or organization, if any, responsible for overseeing such composite currency;
- (14) the designation of the currency, currencies or currency units in which payment of the principal of and interest and premium, if any, on the Securities of the Series will be made;
- (15) if payments of principal or of interest or premium, if any, on the Securities of the Series are to be made in one or more currencies or currency units other than that or those in which such Securities are denominated, the manner in which the exchange rate with respect to such payments will be determined;
- (16) the manner in which the amounts of payment of principal or of interest and premium, if any, on the Securities of the Series will be determined, if such amounts may be determined by reference to an index based on a currency or currencies or by reference to a commodity, commodity index, stock exchange index or financial index;
- (17) the provisions, if any, relating to any collateral provided for the Securities of the Series;
- (18) any addition to or change in the covenants set forth in Articles 4 or 5 that applies to Securities of the Series;
- (19) any addition to or change in the Events of Default which applies to any Securities of the Series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.2;
- (20) the terms and conditions, if any, for conversion of the Securities into or exchange of the Securities for shares of common stock or preferred stock of the Company that apply to Securities of the Series;
- (21) any depositories, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein;

(22) the terms and conditions, if any, upon which the Securities shall be subordinated in right of payment to other Indebtedness of the Company;

(23) if applicable, that the Securities of the Series, in whole or any specified part, shall be defeasible pursuant to Article 9; and

(24) any other terms of the Securities of the Series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 8.1, but which may modify or delete any provision of this Indenture insofar as it applies to such Series).

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture or Officers' Certificate referred to above, and the authorized principal amount of any Series may not be increased to provide for issuances of additional Securities of such Series, unless otherwise provided in such Board Resolution, supplemental indenture or Officers' Certificate.

#### *Section 2.3. Execution and Authentication.*

The Securities shall be executed on behalf of the Company by two Officers of the Company or an Officer and an Assistant Secretary of the Company. Each such signature may be either manual or facsimile. The Company's seal may be impressed, affixed, imprinted or reproduced on the Securities and may be in facsimile form.

If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid.

A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture. The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to oral or electronic instructions from the Company or its duly authorized agent or agents, which oral instructions shall be promptly confirmed in writing. Each Security shall be dated the date of its authentication.

The aggregate principal amount of Securities of any Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.2, except as provided in Section 2.8.

Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.2) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.4, and (c) an

Opinion of Counsel complying with Section 10.4.

The Trustee shall have the right to decline to authenticate and deliver any Securities of such Series: (a) if the Trustee, being advised in writing by outside counsel, determines that such action may not lawfully be taken; or (b) if the Trustee in good faith by its board of directors or trustees, executive committee or a trust committee of directors and/or vice-presidents shall reasonably determine that such action would expose the Trustee to personal liability, or cause it to have a conflict of interest with respect to Holders of any then outstanding Series of Securities.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Any appointment shall be evidenced by instrument signed by an authorized officer of the Trustee, a copy of which shall be furnished to the Company. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

*Section 2.4. Registrar and Paying Agent.*

The Company shall maintain in each Place of Payment for any Series of Securities (i) an office or agency where such Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where such Securities may be presented for payment ("Paying Agent") *provided* that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the register for the Securities maintained by the Registrar, and (iii) an office or agency where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served ("Service Agent"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company may have one or more co-registrars and one or more additional paying agents. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee as set forth in Section 10.2. If the Company acts as Paying Agent, it shall segregate the money held by it for the payment of principal of and premium, if any, and interest on the Securities and hold it as a separate trust fund. The Company may change any Paying Agent, Registrar or co-registrar without notice to any Securityholder.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company shall give prompt written notice to the Trustee of such designation or rescission and of any change in the location of any such other office or agency.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this

Indenture that relate to such Agent. The Company shall notify the Trustee of the name and address of any such Agent. If the Company fails to maintain a Registrar or Paying Agent, or agent for service of notices and demands, or fails to give the foregoing notice, the Trustee shall act as such. The Company hereby appoints the Trustee as the initial Registrar, Paying Agent and Service Agent for each Series unless another Registrar, Paying Agent or Service Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued. The Company hereby initially designates the Corporate Trust Office of the Trustee as such office of the Company.

**Section 2.5. Paying Agent to Hold Assets in Trust.**

Not later than 11:00 a.m., New York City time, on each due date of any principal or premium or interest on any Securities, the Company shall deposit with the Paying Agent money in immediately available funds sufficient to pay such principal, premium, if any, or interest. The Trustee as Paying Agent shall, and the Company shall require each Paying Agent other than the Trustee to agree in writing that each Paying Agent shall hold in trust for the benefit of the Holders of any Series of Securities or the Trustee all assets held by the Paying Agent for the payment of principal of, or interest or premium (if any) on, such Series of Securities (whether such assets have been distributed to it by the Company or any other obligor on such Series of Securities), and the Company and the Paying Agent shall notify the Trustee in writing of any Default by the Company (or any other obligor on such Series of Securities) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed and the Trustee may at any time during the continuance of any payment default with respect to any Series of Securities, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company to the Paying Agent, the Paying Agent shall have no further liability for such assets.

**Section 2.6. Securityholder Lists.**

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Securityholders of each Series of Securities. If the Trustee is not the Registrar, the Company shall furnish to the Trustee as of each regular record date for the payment of interest on the Securities of a Series and before each related Interest Payment Date, and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Securityholders of each Series of Securities.

**Section 2.7. Transfer and Exchange.**

When Securities of a Series are presented to the Registrar with a request to register the transfer thereof, the Registrar shall register the transfer as requested if the requirements of applicable law are met, and when such Securities of a Series are presented to the Registrar with a request to exchange them for an equal principal amount of other authorized denominations of Securities of the same Series, the Registrar shall make the exchange as requested. To permit transfers and exchanges, upon surrender of any Security for registration of transfer at the office

or agency maintained pursuant to Section 2.4 hereof, the Company shall execute and the Trustee shall authenticate Securities at the Registrar's request.

If Securities are issued as Global Securities, the provisions of Section 2.15 shall apply.

All Securities issued upon any registration of transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such registration of transfer or exchange.

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Registrar or a co-Registrar) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar or a co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

Any exchange or transfer shall be without charge, except that the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to a transfer or exchange, but this provision shall not apply to any exchange pursuant to Section 2.11, 3.6 or 8.5 hereof. The Trustee shall not be required to register transfers of Securities of any Series or to exchange Securities of any Series for a period of 15 days before the record date for selection for redemption of such Securities. The Trustee shall not be required to exchange or register transfers of Securities of any Series called or being called for redemption in whole or in part, except the unredeemed portion of such Security being redeemed in part.

#### *Section 2.8. Replacement Securities.*

If a mutilated Security is surrendered to the Trustee or if the Holder of a Security presents evidence to the satisfaction of the Company and the Trustee that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. An indemnity bond may be required by the Company or the Trustee that is sufficient in the reasonable judgment of the Company or the Trustee, as the case may be, to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Security is replaced. The Company may charge such Holder for its out-of-pocket expenses in replacing a Security, including the fees and expenses of the Trustee. Every replacement Security shall constitute an original additional obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder.

#### *Section 2.9. Outstanding Securities.*

Securities outstanding at any time are all Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section 2.9 as not outstanding.

If a Security is replaced pursuant to Section 2.8 (other than a mutilated Security

surrendered for replacement), it ceases to be outstanding until the Company and the Trustee receive proof satisfactory to each of them that the replaced Security is held by a bona fide purchaser. A mutilated Security ceases to be outstanding upon surrender of such Security and replacement thereof pursuant to Section 2.8.

If a Paying Agent holds on a Redemption Date or the Stated Maturity money sufficient to pay the principal of, premium, if any, and accrued interest on Securities payable on that date and is not prohibited from paying such money to the Holders thereof pursuant to the terms of this Indenture (*provided* that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made), then on and after that date such Securities cease to be outstanding and interest on them ceases to accrue.

A Security does not cease to be outstanding solely because the Company or an Affiliate holds the Security.

#### *Section 2.10. When Treasury Securities Disregarded; Determination Of Holders' Action.*

In determining whether the Holders of the required aggregate principal amount of the Securities of any Series have concurred in any direction, waiver or consent, the Securities of any Series owned by the Company or any other obligor on such Securities or by any Affiliate of any of them shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities of such Series which the Trustee actually knows are so owned shall be so disregarded. Securities of such Series so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to the Securities of such Series and that the pledgee is not the Company or any other obligor upon the Securities of such Series or any Affiliate of any of them.

#### *Section 2.11. Temporary Securities.*

Until definitive Securities are ready for delivery, the Company may prepare and execute and the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form, and shall carry all rights, of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and execute and the Trustee shall authenticate definitive Securities in exchange for temporary Securities presented to it without charge to the Holder.

#### *Section 2.12. Cancellation.*

All Securities surrendered for payment, redemption, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee for cancellation. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Registrar

and the Paying Agent shall forward to the Trustee any Securities surrendered to them for transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent, and no one else, shall cancel and at the written request of the Company, shall dispose of all Securities surrendered for transfer, exchange, payment or cancellation. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the Indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation pursuant to this Section 2.12. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 2.12, except as expressly permitted by this Indenture.

*Section 2.13. Payment of Interest; Defaulted Interest; Computation of Interest.*

Except as otherwise provided as contemplated by Section 2.2 with respect to any Series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security is registered at the close of business on the regular record date for such interest, as provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the terms of such Series.

If the Company defaults in a payment of interest on the Securities, it shall pay the defaulted amounts, plus any interest payable on defaulted amounts pursuant to Section 4.1 hereof, to the Persons who are Securityholders on a subsequent special record date, which date shall be the fifteenth day, whether or not a Business Day, next preceding the date fixed by the Company for the payment of defaulted interest. At least 15 days before the special record date, the Company shall mail or cause to be mailed to each Securityholder, with a copy to the Trustee, a notice that states the special record date, the payment date, and the amount of defaulted interest, and interest payable on such defaulted interest, if any, to be paid.

Except as otherwise specified as contemplated by Section 2.2 for Securities of any Series, interest on the Securities of each Series shall be computed on the basis of a 360-day year of twelve 30-day months.

*Section 2.14. CUSIP Number.*

The Company in issuing the Securities may use one or more "CUSIP" numbers, and if so, the Trustee shall use the CUSIP number(s) in notices of redemption or exchange as a convenience to Holders, *provided* that any such notice may state that no representation is made as to the correctness or accuracy of the CUSIP number(s) printed in the notice or on the Securities, and that reliance may be placed only on the other identification numbers printed on the Securities and any such redemption shall not be affected by any defect in or omission of any such numbers.

**Section 2.15. Provisions For Global Securities.**

(a) A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities and the Depositary for such Global Securities or Securities.

(b) Notwithstanding any provisions to the contrary contained in Section 2.7 of the Indenture and in addition thereto, if, and only if (A) the Depositary at any time is unwilling or unable to continue as Depositary for such Global Security or ceases to be a clearing agency registered under the Exchange Act and a successor Depositary is not appointed by the Company within 90 days after the date the Company is so informed in writing or becomes aware of the same, (B) an Event of Default occurs with respect to the Securities or (C) the Company shall so elect, the Company promptly will execute and deliver to the Trustee definitive Securities, and the Trustee, upon receipt of a Company Request for the authentication and delivery of such definitive Securities (which the Company will promptly execute and deliver to the Trustee) and an Officers' Certificate to the effect that such Global Security shall be so exchangeable, will authenticate and deliver definitive Securities, without charge, registered in such names and in such authorized denominations as the Depositary shall direct in writing (pursuant to instructions from its direct and indirect participants or otherwise) in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms. Upon the exchange of a Global Security for definitive Securities, such Global Security shall be canceled by the Trustee. Unless and until it is exchanged in whole or in part for definitive Securities, as provided in this Section 2.15(b), a Global Security may not be transferred except as a whole by the Depositary with respect to such Global Security to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

(c) Any Global Security issued hereunder shall bear a legend in substantially the following form:

"This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depositary or a nominee of the Depositary. This Security is exchangeable for Securities registered in the name of a Person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary."

(d) The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(e) Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.2, payment of the principal of and interest and premium, if any, on any Global Security shall be made to the Depositary or its nominee in its capacity as the Holder thereof.

(f) Except as provided in Section 2.15(e), the Company, the Trustee and any Agent shall treat a Person as the Holder of such principal amount of outstanding Securities of any Series represented by a Global Security as shall be specified in a written statement of the Depositary (which may be in the form of a participants' list for such Series) with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture, *provided* that until the Trustee is so provided with a written statement, it may treat the Depositary or any other Person in whose name a Global Security is registered as the owner of such Global Security for the purpose of receiving payment of principal of and any premium and, any interest on such Global Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

#### Section 2.16. Persons Deemed Owners.

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Registrar or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee, the Registrar nor any agent of the Company, the Registrar or the Trustee shall be affected by notice to the contrary.

### **ARTICLE 3** **REDEMPTION**

#### Section 3.1. Notices to Trustee.

The provisions of this Article shall be applicable to the Securities of any Series which are redeemable prior to their Stated Maturity except as otherwise specified as contemplated by Section 2.2 for Securities of such Series. The Company may, with respect to the Securities of any such Series, reserve the right to redeem and pay the Series of Securities or may covenant to redeem and pay the Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities or the related Board Resolution, supplemental indenture or Officers' Certificate. If a Series of Securities is redeemable and the Company elects to redeem such Securities of a Series, it shall notify the Trustee of the Redemption Date and the principal amount of Securities to be redeemed at least 45 days (unless a shorter notice shall be satisfactory to the Trustee) before the Redemption Date. Any such notice may be canceled at any time prior to notice of such redemption being mailed to any Holder and shall thereby be void and of no effect.

#### Section 3.2. Selection by Trustee of Securities to be Redeemed.

Unless otherwise indicated for a particular Series of Securities by a Board Resolution, a supplemental indenture or an Officers' Certificate, if fewer than all of the Securities of a Series are to be redeemed, the Trustee shall select the Securities of a Series to be redeemed pro rata, by lot or by any other method that the Trustee considers fair and appropriate (unless the Company specifically directs the Trustee otherwise) and, if such Securities are listed on any securities exchange, by a method that complies with the requirements of such exchange.

The Trustee shall make the selection from Securities of a Series outstanding and not previously called for redemption and shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount thereof to be redeemed at least 35 but not more than 60 days before the Redemption Date. Securities of a Series in denominations of \$1,000 may be redeemed only in whole. The Trustee may select for redemption portions of the principal of Securities of a Series that have denominations larger than \$1,000. Securities of a Series and portions of them it selects shall be in amounts of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.2(10), the minimum principal denomination for each Series and integral multiples thereof. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption.

### Section 3.3. Notice of Redemption.

Unless otherwise indicated for a particular Series by Board Resolution, a supplemental indenture hereto or an Officers' Certificate, at least 30 days, and no more than 60 days, before a Redemption Date, the Company shall mail, or cause to be mailed, a notice of redemption by first-class mail to each Holder of Securities to be redeemed at his or her last address as the same appears on the registry books maintained by the Registrar. The notice shall identify the Securities to be redeemed (including the CUSIP number(s) thereof, if any) and shall state:

- (1) the Redemption Date;
- (2) the redemption price, and that such redemption price shall become due and payable on the Redemption Date;
- (3) if any Security of a Series is being redeemed in part, the portion of the principal amount of such Security of a Series to be redeemed and that, after the Redemption Date and upon surrender of such Security of a Series, a new Security or Securities in principal amount equal to the unredeemed portion will be issued;
- (4) the name and address of the Paying Agent;
- (5) that Securities of a Series called for redemption must be surrendered to the Paying Agent to collect the redemption price, and the place or places where each such Security is to be surrendered for such payment;
- (6) that, unless the Company defaults in making the redemption payment, interest on the Securities of a Series called for redemption ceases to accrue on the Redemption Date, and the only remaining right of the Holders of such Securities is to

receive payment of the redemption price upon surrender to the Paying Agent of the Securities redeemed;

(7) if fewer than all the Securities of a Series are to be redeemed, the identification of the particular Securities of a Series (or portion thereof) to be redeemed, as well as the aggregate principal amount of Securities of a Series to be redeemed and the aggregate principal amount of Securities of a Series to be outstanding after such partial redemption;

(8) the CUSIP number, if any, printed on the Securities being redeemed; and

(9) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Company's request, upon receipt of a Company Order, the Trustee shall give the notice of redemption in the Company's name and at the Company's sole expense.

#### **Section 3.4. Effect of Notice of Redemption.**

Once the notice of redemption described in Section 3.3 is mailed, Securities of a Series called for redemption become due and payable on the Redemption Date and at the redemption price, plus interest, if any, accrued to the Redemption Date. Upon surrender to the Trustee or Paying Agent, such Securities of a Series shall be paid at the redemption price, plus accrued interest, if any, to the Redemption Date, *provided* that if the Redemption Date is after a regular interest payment record date and on or prior to the next Interest Payment Date, the accrued interest shall be payable to the Holder of the redeemed Securities registered on the relevant record date, as specified by the Company in the notice to the Trustee pursuant to Section 3.1 hereof.

#### **Section 3.5. Deposit of Redemption Price.**

On or prior to the Redemption Date (but no later than 11:00 A.M. Eastern Time on such date), the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date other than Securities or portions thereof called for redemption on that date which have been delivered by the Company to the Trustee for cancellation.

On and after any Redemption Date, if money sufficient to pay the redemption price of and accrued interest on Securities called for redemption shall have been made available in accordance with the preceding paragraph and the Company and the Paying Agent are not prohibited from paying such moneys to Holders, the Securities called for redemption will cease to accrue interest and the only right of the Holders of such Securities will be to receive payment of the redemption price of and, subject to the proviso in Section 3.4, accrued and unpaid interest on such Securities to the Redemption Date. If any Security called for redemption shall not be so paid, interest will be paid, from the Redemption Date until such redemption payment is made, on the unpaid principal of the Security and any interest or premium (if any) not paid on such unpaid principal, in each case, unless otherwise specified with respect to the Securities of such Series as contemplated by Section 2.2, at the rate of interest borne by such Security.

**Section 3.6. Securities Redeemed In Part.**

Upon surrender of a Security of a Series that is redeemed in part, the Company shall execute and, upon receipt of a Company Order, the Trustee shall authenticate for a Holder, at the Company's expense, a new Security of the same Series equal in principal amount to the unredeemed portion of the Security surrendered.

**ARTICLE 4**  
**COVENANTS**

**Section 4.1. Payment of Securities.**

The Company shall pay the principal of and interest and premium, if any, on each Series of Securities on the dates and in the manner provided in such Securities and this Indenture.

An installment of principal or interest shall be considered paid on the date it is due if the Trustee or Paying Agent holds on that date money designated for and sufficient to pay such installment and is not prohibited from paying such money to the Holders pursuant to the terms of this Indenture or otherwise.

The Company shall pay interest on overdue principal, and overdue interest, to the extent lawful, at the rate borne by the Securities of the applicable Series unless otherwise specified as contemplated by Section 2.2 with respect to the Securities of a Series.

**Section 4.2. SEC Reports.**

The Company will:

(1) file with the Trustee within 15 days after the time it is required to file the same with the SEC, copies of the quarterly and annual report and of the information documents and other reports, if any, which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to the Holders of Securities, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in TIA

Section 313(c), such summaries of any information, documents and reports required to be filed by the Company pursuant to paragraph (1) or (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

*Section 4.3. Maintenance of Office or Agency.*

The Company shall maintain an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where any Series of Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in such location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company also from time to time may designate one or more additional offices or agencies where the Securities of any Series may be presented or surrendered for any or all such purposes and from time to time may rescind any such designation; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

*Section 4.4. Compliance Certificate.*

(a) The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate which complies with TIA Section 314(a)(4) stating that a review of the activities of the Company and its Subsidiaries during such fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and that there is no default in the performance or observance of any of the terms, provisions and conditions hereof (or, if a Default or Event of Default shall have occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest or premium, if any, on the Securities is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) (i) If any Default or Event of Default has occurred and is continuing or (ii) if any Holder seeks to exercise any remedy hereunder with respect to a claimed Default under this Indenture or the Securities, within five Business Days after its becoming aware of such occurrence the Company shall deliver to the Trustee an Officers' Certificate specifying such

event, notice or other action and what action the Company is taking or proposes to take with respect thereto.

**Section 4.5. Corporate Existence.**

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, in accordance with the organizational documents (as the same may be amended from time to time) of the Company and the rights (charter and statutory), licenses and franchises of the Company; *provided, however,* that the Company shall not be required to preserve its corporate existence, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not adverse in any material respect to the Holders.

**Section 4.6. Waiver of Certain Covenants.**

With respect to the Securities of any Series, the Company may omit in any particular instance to comply with any term, provision or condition contained in Section 4.5 or otherwise specified pursuant to Section 2.1(8) as being applicable to the Securities of such Series, if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Securities of such Series waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

**ARTICLE 5**  
**SUCCESSOR CORPORATION**

**Section 5.1. Limitation on Consolidation, Merger and Sale of Assets.**

(a) The Company will not, in any transaction or series of transactions, merge or consolidate with or into, or sell, assign, transfer or lease or otherwise dispose of all or substantially all of its properties and assets (as an entirety or substantially as an entirety in one transaction or a series of related transactions), to any Person or Persons, unless at the time of and after giving effect thereto (i) either (A) if the transaction or series of transactions is a merger or consolidation, the Company shall be the surviving Person of such merger or consolidation, or (B) the Person formed by such consolidation or into which the Company is merged or to which the properties and assets of the Company are transferred (any such surviving Person or transferee Person being the "Surviving Entity") shall be a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia and shall expressly assume by a supplemental indenture executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all of the obligations of the Company (including, without limitation, the obligation to pay the principal of, and premium and interest, if any, on the Securities and the performance of all of the other covenants) under the Securities of each Series and this Indenture, and in each case, this Indenture shall remain in full force and effect; and (ii)

immediately before and immediately after giving effect to such transaction or series of transactions on a pro forma basis (including, without limitation, any Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing.

(b) In connection with any consolidation, merger or transfer of assets contemplated by this Section 5.1, the Company shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and the supplemental indenture in respect thereto comply with this Section 5.1 and that all conditions precedent herein provided for relating to such transaction or transactions have been complied with.

#### Section 5.2. Successor Person Substituted.

Upon any consolidation or merger, or any transfer of all or substantially all of the assets of the Company in accordance with Section 5.1 above, the successor corporation formed by such consolidation or into which the Company is merged or to which such transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor corporation had been named as the Company herein, and thereafter (except with respect to any such transfer which is a lease) the predecessor corporation shall be relieved of all obligations and covenants under this Indenture and the Securities.

## ARTICLE 6

### DEFUALTS AND REMEDIES

#### Section 6.1. Events of Default.

"Events of Default," wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers' Certificate, it is provided that such Series shall not have the benefit of said Event of Default:

(1) there is a default in the payment of any principal of, or premium, if any, on the Securities of such Series when the same becomes due and payable, whether at Maturity, or upon acceleration, redemption, or otherwise;

(2) there is a default in the payment of any interest on any Security of such Series when the same becomes due and payable and the Default continues for a period of 30 days;

(3) the Company defaults in the performance of or breaches any other covenant or agreement of the Company in the Indenture applicable to such Series and such default or breach continues for a period of 60 consecutive days after written notice thereof has been given to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Securities of such Series;

(4) an event of default under any indenture or instrument evidencing or under which the Company then has outstanding any Indebtedness shall occur and be continuing and either

- (i) such event of default results from the failure to pay the principal of such Indebtedness in excess of \$100 million at final maturity of such Indebtedness, individually or in the aggregate; or
- (ii) as a result of such event of default the maturity of such Indebtedness shall have been accelerated so that the same shall be or become due and payable prior to the date on which the same would otherwise have become due and payable and the principal amount of such Indebtedness, together with the principal of any other Indebtedness of the Company in default at final maturity, or the maturity of which has been accelerated, aggregates at least \$100 million, individually or in the aggregate;

if such Indebtedness is not discharged or acceleration is not rescinded or annulled within 10 days after written notice specifying such default has been given to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Securities of such Series;

(5) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

- (i) commences a voluntary case or proceedings,
- (ii) consents to the entry of an order for relief against it in an involuntary case or proceedings,
- (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property,
- (iv) makes a general assignment for the benefit of its creditors, or
- (v) issues a public announcement admitting its inability to pay its debts generally as they become due;

(6) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (a) is for relief against the Company or any Significant Subsidiary in an involuntary case, (b) appoints a Custodian of the Company or any Significant Subsidiary or for all or substantially all of its property, or (c) orders the winding-up or liquidation of the Company or any Significant Subsidiary, and the order or decree remains unstayed and in effect for 90 days; or

(7) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.2(19).

The term "Bankruptcy Law" means Title 11, U.S. Code or any similar federal or state law

for the relief of debtors. The term "Custodian" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

The Trustee may withhold notice of any Default (except in payment of principal or premium, if any, or interest on the Securities) to the Holders of the Securities of any Series in accordance with Section 7.5. When a Default is cured, it ceases to exist.

#### Section 6.2. Acceleration.

If an Event of Default with respect to Securities of any Series at the time outstanding (other than an Event of Default arising under Section 6.1(5) or (6)) occurs and is continuing, the Trustee by written notice to the Company, or the Holders of not less than 25% in aggregate principal amount of the Securities of that Series then outstanding by written notice to the Company and the Trustee, may declare that the entire principal amount of, and premium if any, on all the Securities of that Series then outstanding plus accrued and unpaid interest to the date of acceleration are immediately due and payable, in which case such amounts shall become immediately due and payable; *provided, however*, that after such acceleration but before a judgment or decree based on such acceleration is obtained by the Trustee, the Holders of a majority in aggregate principal amount of the outstanding Securities of such Series may rescind and annul such acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of accelerated principal, premium, if any, or interest that has become due solely because of the acceleration, have been cured or waived, (ii) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid and (iii) the rescission would not conflict with any judgment or decree. No such rescission shall affect any subsequent Default or impair any right consequent thereto. In case an Event of Default specified in Section 6.1(5) or (6) occurs, such principal, premium, if any, and interest amount with respect to all of the Securities of that Series shall be due and payable immediately without any declaration or other act on the part of the Trustee or the Holders of the Securities of that Series.

#### Section 6.3. Remedies.

If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may pursue any available remedy by proceeding at law or in equity to collect the payment of principal of, or premium, if any, and interest on the Securities of that Series or to enforce the performance of any provision of the Securities of that Series or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Securities of that Series or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Securityholder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

#### Section 6.4. Waiver of Past Defaults and Events of Default.

The Holders of not less than a majority in principal amount of the outstanding

Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except a default:

- (1) in the payment of the principal of, or premium or interest on any Security of such Series, or
- (2) in respect of a covenant or provision hereof which under Article Nine cannot be modified or amended without the consent of the Holder of each Outstanding Security of such Series affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

#### *Section 6.5. Control By Majority.*

Subject to Sections 6.2, 6.7 and 8.2 hereof, the Holders of a majority in principal amount of the Securities of any Series then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee by this Indenture with respect to such Series. The Trustee, however, may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines may be unduly prejudicial to the rights of another Securityholder or that may involve the Trustee in personal liability; *provided* that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. This Section 6.5 shall be in lieu of TIA Section 316(a)(1)(A), and TIA Section 316(a)(1)(A) is hereby expressly excluded from this Indenture and Section as permitted by the TIA.

#### *Section 6.6. Limitation On Suits.*

Subject to Section 6.7 below, a Securityholder may not institute any proceeding or pursue any remedy with respect to this Indenture or the Securities of a Series unless:

- (1) the Holder gives to the Trustee written notice of a continuing Event of Default with respect to the Securities of that Series;
- (2) the Holders of at least 25% in aggregate principal amount of the Securities of such Series then outstanding make a written request to the Trustee to pursue the remedy;
- (3) such Holder or Holders offer to the Trustee indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to be incurred in compliance with such request;
- (4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Securities of such Series then outstanding.

A Securityholder may not use this Indenture to prejudice the rights of another Securityholder or to obtain a preference or priority over another Securityholder.

**Section 6.7. Rights of Holders to Receive Payment.**

Notwithstanding any other provision of this Indenture, the right of any Holder of a Security of a Series to receive payment of principal of, and premium, if any, and interest of the Security of such Series on or after the respective due dates expressed in the Security of such Series, or to bring suit for the enforcement of any such payment on or after such respective dates, is absolute and unconditional and shall not be impaired or affected without the consent of the Holder.

**Section 6.8. Collection Suit By Trustee.**

If an Event of Default in payment of principal, premium or interest specified in Section 6.1(1) or (2) hereof with respect to Securities of any Series at the time outstanding occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company (or any other obligor on the Securities of that Series) for the whole amount of unpaid principal and premium, if any, and accrued interest remaining unpaid, together with interest on overdue principal and premium, if any, and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate then borne by the Securities of that Series, and such further amounts as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as set forth in Section 7.7.

**Section 6.9. Trustee May File Proofs of Claim.**

The Trustee may file such proofs of claim and other papers or documents, and take other actions (including sitting on a committee of creditors) as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Securityholders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Securities), any of their respective creditors or any of their respective property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same after deduction of its charges and expenses to the extent that any such charges and expenses are not paid out of the estate in any such proceedings and any custodian in any such judicial proceeding is hereby authorized by each Securityholder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Securityholders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Securityholder any plan of reorganization, arrangement, adjustment or composition affecting the Securities of a Series or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Securityholder in any such proceedings.

**Section 6.10. Priorities.**

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in

the following order:

FIRST: to the Trustee for amounts due to it under Section 7.7;

SECOND: to Holders of Securities for amounts due and unpaid on the Securities for principal, premium, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal, premium, if any, and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders of Securities pursuant to this Section 6.10.

**Section 6.11. *Undertaking for Costs.***

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.7 hereof or a suit by Holders of more than 10% in principal amount of the Securities of a Series then outstanding.

**Section 6.12. *Waiver of Stay, Extension or Usury Laws.***

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension, usury or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, premium, if any, and/or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and (to the extent that they may lawfully do so) the Company hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**ARTICLE 7  
TRUSTEE**

**Section 7.1. *Duties of Trustee.***

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under the same circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

- (1) the Trustee need perform only those duties that are specifically set forth in this Indenture and no covenants or obligations shall be implied in this Indenture against the Trustee.
- (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

- (1) This paragraph does not limit the effect of paragraph (b) of this Section 7.1.
  - (2) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.
  - (3) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Sections 6.2 and 6.5 hereof.
- (d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity satisfactory to it against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, paragraphs (a), (b), (c) and (d) of this Section 7.1 shall govern every provision of this Indenture that in any way relates to the Trustee.

(f) The Trustee and Paying Agent shall not be liable for interest on any money received by it except as the Trustee and Paying Agent may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by the law.

(g) The Paying Agent, the Registrar and any authenticating agent shall be entitled to the protections, immunities and standard of care set forth in paragraphs (a), (b), (c), (d) and (f) of this Section 7.1 and in Section 7.2 with respect to the Trustee.

**Section 7.2. Rights of Trustee.**

(a) Subject to Section 7.1 hereof:

(1) The Trustee may rely on and shall be protected in acting or refraining from acting upon any document reasonably believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(2) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel, or both, which shall conform to the provisions of Section 10.5 hereof. The Trustee shall be protected and shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel.

(3) The Trustee may act through agents and attorneys and shall not be responsible for the misconduct or negligence of any agent appointed by it with due care.

(4) The Trustee shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers; *provided, however*, that the Trustee's conduct does not constitute gross negligence, willful misconduct or bad faith.

(5) The Trustee may consult with counsel reasonably acceptable to the Trustee, which may be counsel to the Company, and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder in good faith and in accordance with the advice or opinion of such counsel.

(6) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby.

(7) The Trustee shall not be deemed to have knowledge of any fact or matter (including, without limitation, a Default or Event of Default) unless such fact or matter is known to a Responsible Officer of the Trustee.

(8) Unless otherwise expressly provided herein or in the Securities of a Series or the related Board Resolution, supplemental indenture or Officers' Certificate, the Trustee shall not have any responsibility with respect to reports, notices, certificates or other documents filed with it hereunder, except to make them available for inspection, at reasonable times, by Securityholders, it being understood that delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the

Company's compliance with any of its covenants hereunder (except as set forth in Section 4.4).

**Section 7.3. Individual Rights of Trustee.**

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may make loans to, accept deposits from, perform services for or otherwise deal with the Company, or any Affiliate thereof, with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee, however, shall be subject to Sections 7.10 and 7.11 hereof.

**Section 7.4. Trustee's Disclaimer.**

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities (except that the Trustee represents that it is duly authorized to execute and deliver this Indenture and authenticate the Securities and perform its obligations hereunder), it shall not be accountable for the Company's use of the proceeds from the sale of Securities or any money paid to the Company pursuant to the terms of this Indenture and it shall not be responsible for any statement in the Securities or any other document in connection with the Sale of the Securities or pursuant to this Indenture other than its certificates of authentication.

**Section 7.5. Notice of Default.**

If a Default or an Event of Default occurs and is continuing with respect to the Securities of any Series and if it is known to the Trustee, the Trustee shall mail to each Securityholder of the Securities of that Series notice of the Default or the Event of Default, as the case may be, within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default (except if such Default or Event of Default has been validly cured or waived before the giving of such notice). Except in the case of a Default or an Event of Default in payment of the principal of, or premium, if any, or interest on any Security of any Series, the Trustee may withhold the notice if and so long as the Board of Directors of the Trustee, the executive committee or any trust committee of such board and/or its Responsible Officers in good faith determine(s) that withholding the notice is in the interests of the Securityholders of that Series.

**Section 7.6. Reports By Trustee To Holders.**

If and to the extent required by the TIA, within 60 days after April 1 of each year, commencing the April 1 following the date of this Indenture, the Trustee shall mail to each Securityholder a brief report dated as of such April 1 that complies with TIA Section 313(a). The Trustee also shall comply with TIA Sections 313(b) and 313(c).

A copy of each report at the time of its mailing to Securityholders shall be filed with the Commission and any stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when the Securities of any Series are listed on any stock exchange or any delisting thereof, and the Trustee shall comply with TIA Section 313(d).

#### **Section 7.7. Compensation And Indemnity.**

The Company shall pay to the Trustee from time to time reasonable compensation for its services. The Trustee's compensation shall not be limited by any provision of law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee within 45 days after receipt of request for all reasonable out-of-pocket disbursements and expenses incurred or made by it in connection with its duties under this Indenture, including the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

The Company shall indemnify the Trustee or any predecessor Trustee for, and hold it harmless against, any and all loss or liability incurred by it in connection with the acceptance or performance of its duties under this Indenture including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The failure by the Trustee to so notify the Company shall not however relieve the Company of its obligations. Notwithstanding the foregoing, the Company need not reimburse the Trustee for any expense or indemnify it against any loss or liability incurred by the Trustee through its gross negligence or bad faith. To secure the payment obligations of the Company in this Section 7.7, the Trustee shall have a lien prior to the Securities of any Series on all money or property held or collected by the Trustee except such money or property held in trust to pay principal of and interest and premium (if any) on particular Securities of that Series.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.1(5) or (6) hereof occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law. For purposes of this Section 7.7, the term "Trustee" shall include any trustee appointed pursuant to Article 9.

#### **Section 7.8. Replacement of Trustee.**

The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company in writing at least 90 days in advance of such resignation.

The Holders of a majority in principal amount of the outstanding Securities of any Series may remove the Trustee with respect to that Series by notifying the removed Trustee in writing and may appoint a successor Trustee with respect to that Series with the consent of the Company, which consent shall not be unreasonably withheld. The Company may remove the Trustee with respect to that Series at its election if:

- (1) the Trustee fails to comply with, or ceases to be eligible under, Section 7.10 hereof;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

- (3) a Custodian or other public officer takes charge of the Trustee or its property; or
- (4) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee with respect to any Series of Securities for any reason, the Company shall promptly appoint, by Board Resolution, a successor Trustee.

If a successor Trustee with respect to the Securities of one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least 10% in principal amount of the outstanding Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee with respect to the Securities of one or more Series fails to comply with Section 7.10 hereof, any Securityholder of the applicable Series may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately following such delivery, (i) the retiring Trustee with respect to one or more Series shall, subject to its rights under Section 7.7 hereof, transfer all property held by it as Trustee with respect to such Series to the successor Trustee, (ii) the resignation or removal of the retiring Trustee shall become effective, and (iii) the successor Trustee with respect to such Series shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee with respect to the Securities of one or more Series shall mail notice of its succession to each Securityholder of such Series.

#### *Section 7.9. Successor Trustee By Consolidation, Merger or Conversion.*

If the Trustee, or any Agent, consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another corporation, subject to Section 7.10 hereof, the successor corporation without any further act shall be the successor Trustee or Agent, as the case may be.

#### *Section 7.10. Eligibility; Disqualification.*

This Indenture shall always have a Trustee who satisfies the requirements of TIA Sections 310(a) in every respect. The Trustee (or in the case of a Trustee that is a Person included in a bank holding company system, the related bank holding company) shall have a combined capital and surplus of at least \$100,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA Section 310(b), including the provision in Section 310(b)(1). In addition, if the Trustee is a Person included in a bank holding company system, the Trustee, independently of such bank holding company, shall meet the capital requirements of TIA Section 310(a)(2). If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 7.10, it shall resign immediately in the manner and with the effect specified in this Article 7.

**Section 7.11. Preferential Collection of Claims Against Company.**

The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

**Section 7.12. Paying Agents.**

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to it and the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 7.12:

- (1) that it will hold all sums held by it as agent for the payment of principal of, or premium, if any, or interest on, the Securities (whether such sums have been paid to it by the Company or by any obligor on the Securities) in trust for the benefit of Holders of the Securities or the Trustee;
- (2) that it will at any time during the continuance of any Event of Default, upon written request from the Trustee, deliver to the Trustee all sums so held in trust by it together with a full accounting thereof; and
- (3) that it will give the Trustee written notice within three (3) Business Days after any failure of the Company (or by any obligor on the Securities) in the payment of any installment of the principal of, premium, if any, or interest on, the Securities when the same shall be due and payable.

**ARTICLE 8**  
**AMENDMENTS, SUPPLEMENTS AND WAIVERS**

**Section 8.1. Without Consent of Holders.**

The Company, when authorized by a Board Resolution, and the Trustee may amend or supplement this Indenture or the Securities of any Series without notice to or consent of any Holder of Securities of such Series:

- (1) to cure any ambiguity, defect or inconsistency, *provided* such amendment or supplement does not adversely affect the rights of any Securityholder;
- (2) to provide for the assumption of the Company's obligations to the Holders of the Securities of such Series in connection with a consolidation or merger of the Company or the sale, sale, assignment, transfer, lease or other disposition of all or substantially all of the property and assets of the Company pursuant to Article 5;
- (3) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more Series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee;

- (4) to comply with any requirements of the Commission in order to maintain the qualification of this Indenture under the TIA;
- (5) to make any change that does not adversely affect the rights of any Holder of the Securities of such Series;
- (6) to conform the terms of the Securities or this Indenture to the description thereof contained in the prospectus pursuant to which such Securities are offered and sold;
- (7) to provide for certificated Securities in addition to uncertificated Securities; or
- (8) to provide for the issuance of and establish the form and terms and conditions of Securities of any Series as permitted by this Indenture.

Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture and upon receipt by the Trustee of the documents described in Section 8.6 hereof, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

After an amendment or supplement under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing the amendment or supplement. Any failure of the Company to mail any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any supplemental indenture.

#### *Section 8.2. With Consent of Holders.*

(a) The Company, when authorized by a Board Resolution, and the Trustee may amend or supplement this Indenture or the Securities of any Series with the written consent of the Holders of not less than a majority in aggregate principal amount of the outstanding Securities of such Series affected by such amendment or supplement. However, without the consent of each Securityholder affected, however, an amendment, supplement or waiver may not:

- (1) change the Stated Maturity of, or the principal of or premium or interest on, the Securities of such Series;
- (2) reduce any amounts due on the Securities of such Series or payable upon acceleration of the maturity of the Securities of such series following an Event of Default;
- (3) adversely affect any right of repayment at the Holder's option if such option is applicable to the Securities of such Series in accordance with the provisions of Section 2.1(8);
- (4) change the place (except as otherwise permitted by the terms of this Indenture) or currency of payment on the Securities of such Series;
- (5) modify the Securities of such Series to subordinate such Securities to other indebtedness of the Company;

(6) reduce the percentage of Holders of Securities whose consent is required to modify or amend this Indenture or the Securities of such Series in accordance with the provisions of this Article 8;

(7) reduce the percentage of Holders of Securities whose consent is needed to waive compliance with certain provisions of this Indenture in accordance with the provisions of Section 4.6 or to waive certain Defaults in accordance with the provisions of Section 6.4; and

(8) modify any of the provisions of this Section 8.2, Section 4.6 or Section 6.4, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

(b) Upon the request of the Company, accompanied by a Board Resolution authorizing the execution of any such supplemental indenture, and upon the receipt by the Trustee of evidence reasonably satisfactory to the Trustee of the consent of the Securityholders as aforesaid and upon receipt by the Trustee of the documents described in Section 8.6 hereof, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this section to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

(d) After an amendment or supplement under this Section becomes effective, the Company shall mail to Securityholders a notice briefly describing the amendment or supplement. Any failure of the Company to mail any such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any supplemental indenture.

#### *Section 8.3. Compliance With Trust Indenture Act.*

Every amendment to or supplement of this Indenture or the Securities shall comply with the TIA as then in effect.

#### *Section 8.4. Revocation And Effect Of Consents.*

Until an amendment, supplement, waiver or other action becomes effective, a consent to it by a Holder of a Security is a continuing consent conclusive and binding upon such Holder and every subsequent Holder of the same Security or portion thereof, and of any Security issued upon the transfer thereof or in exchange therefor or in place thereof, even if notation of the consent is not made on any such Security. Any such Holder or subsequent Holder, however, may revoke the consent as to his Security or portion of a Security, if the Trustee receives the notice of revocation before the date the amendment, supplement, waiver or other action becomes effective.

The Company may, but shall not be obligated to, fix a record date for the purpose of

determining the Holders entitled to consent to any amendment, supplement, or waiver which record date shall be at least 30 days prior to the first solicitation of such consent. If a record date is fixed, then, notwithstanding the preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only such Persons, shall be entitled to consent to such amendment, supplement, or waiver or to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date.

After an amendment, supplement, waiver or other action becomes effective, it shall bind every Securityholder, unless it makes a change described in any of clauses (1) through (8) of Section 8.2 hereof. In that case the amendment, supplement, waiver or other action shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security; *provided* that any such waiver shall not impair or affect the right of any Holder to receive payment of principal of and interest and premium (if any) on a Security, on or after the respective due dates expressed in such Security, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

#### Section 8.5. Notation on or Exchange of Securities.

If an amendment, supplement, or waiver changes the terms of a Security of any Series, the Trustee may request the Holder of such Security to deliver it to the Trustee. In such case, the Trustee shall place an appropriate notation on such Security about the changed terms and return it to the Holder. Alternatively, the Company in exchange for such Security may issue and the Trustee, upon receipt of a Company Order, shall authenticate a new security that reflects the changed terms. Failure to make the appropriate notation or issue a new Security shall not affect the validity and effect of such amendment, supplement or waiver.

#### Section 8.6. Trustee To Sign Amendments, Etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 8 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign it. In signing or refusing to sign such amendment, supplement or waiver the Trustee shall be entitled to receive and, subject to Section 7.1 hereof, shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating that such amendment, supplement or waiver is authorized or permitted by this Indenture. The Company may not sign an amendment or supplement until the Board of Directors of the Company approves it.

### ARTICLE 9 DISCHARGE OF INDENTURE; DEFEASANCE

#### Section 9.1. Discharge of Indenture.

When (i) all Securities of any Series previously authenticated and delivered (other than Securities replaced pursuant to Section 2.7) have been delivered to the Trustee for cancellation and the Company has paid all sums payable by it with respect to that Series of Securities under the Indenture, or (ii) (A) the Securities of any Series mature within one year or all of them are to

be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, (B) the Company irrevocably deposits in trust with the Trustee, as trust funds solely for the benefit of the Holders of the Securities of such Series for that purpose, money or U.S. Government Obligations or a combination thereof sufficient (unless such funds consist solely of money in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee) without consideration of any reinvestment, to pay the principal of and interest on the Securities of such Series (other than Securities of such Series replaced pursuant to Section 2.7) to maturity or redemption, as the case may be, and to pay all other sums payable by it under this Indenture, and (C) the Company delivers to the Trustee an Officers' Certificate and an Opinion of Counsel (at the cost and expense of the Company), in each case stating that all conditions precedent provided for in this Article 9 relating to the satisfaction and discharge of the Indenture with respect to the Securities of such Series have been complied with, then this Indenture shall, upon acknowledgment from the Trustee of such satisfaction and discharge, cease to be of further effect with respect to the Securities of such Series.

#### *Section 9.2. Legal Defeasance.*

The Company may at its option, by Board Resolution, be discharged from its obligations with respect to the Securities of any Series on the date upon which the conditions set forth in Section 9.4 below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, such Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Securities of such Series and to have satisfied all its other obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall, subject to Section 9.6 hereof, execute proper instruments acknowledging the same, as are delivered to it by the Company), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of outstanding Securities of such Series to receive solely from the trust funds described in Section 9.4 hereof and as more fully set forth in such section, payments in respect of the principal of, premium, if any, and interest on the Securities of such Series when such payments are due, (B) the Company's obligations with respect to the Securities of such Series under Sections 2.4, 2.5, 2.6, 2.7, 2.8 and 2.9 hereof, (C) the rights, powers, trusts, duties, and immunities of the Trustee hereunder (including claims of, or payments to, the Trustee under or pursuant to Section 7.7 hereof) and (D) this Article 9. Subject to compliance with this Article 9, the Company may exercise its option under this Section 9.2 with respect to the Securities of any Series notwithstanding the prior exercise of its option under Section 9.3 below with respect to the Securities of such Series.

#### *Section 9.3. Covenant Defeasance.*

At the option of the Company, pursuant to a Board Resolution, the Company shall be released from its obligations with respect to the outstanding Securities of any Series under any covenant set forth in Sections 4.2, 4.4 or 4.5 or any covenants to be applicable to the Securities of such Series as contemplated by Section 2.2(18) unless specified otherwise pursuant to said Section, with respect to the outstanding Securities of such Series, on and after the date the conditions set forth in Section 9.4 hereof are satisfied (hereinafter, "Covenant Defeasance"). For this purpose, such Covenant Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified section or portion thereof, whether directly or indirectly by reason of any reference elsewhere herein to any such specified Section or portion thereof or by reason of any reference in any such specified section or portion thereof to any other

provision herein or in any other document, but the remainder of this Indenture and the Securities of any Series shall be unaffected thereby.

**Section 9.4. Conditions to Legal Defeasance or Covenant Defeasance.**

The following shall be the conditions to application of Section 9.2 or Section 9.3 hereof to the outstanding Securities of a Series:

(1) the Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 7.10 hereof who shall agree to comply with the provisions of this Article 9 applicable to it) as funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of the Securities, (A) money in an amount, or (B) U.S. Government Obligations (or, in the case of Securities denominated in a Foreign Currency, Foreign Government Obligations) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount, or (C) a combination thereof, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, the principal of, premium, if any, and accrued interest on the outstanding Securities of such Series at the Stated Maturity of such principal, premium, if any, or interest, or on dates for payment and redemption of such principal, premium, if any, and interest selected in accordance with the terms of this Indenture and of the Securities of such Series;

(2) no Event of Default or Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit, or shall have occurred and be continuing at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration of the longest preference period under any Bankruptcy Law applicable to the Company in respect of such deposit as specified in the Opinion of Counsel identified in paragraph (8) below (it being understood that this condition shall not be deemed satisfied until the expiration of such period);

(3) such Legal Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest for purposes of the TIA with respect to any securities of the Company;

(4) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute default under any other agreement or instrument to which the Company is a party or by which it is bound;

(5) the Company shall have delivered to the Trustee an Opinion of Counsel stating that, as a result of such Legal Defeasance or Covenant Defeasance, neither the trust nor the Trustee will be required to register as an investment company under the Investment Company Act of 1940, as amended;

(6) in the case of an election under Section 9.2 above, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling to the effect that or (ii) there has been a change in any applicable Federal income tax law with the effect that, and such opinion shall confirm that, the Holders of the outstanding Securities of such Series or Persons in their positions will not recognize income, gain or loss for Federal income tax purposes solely as a result of such Legal Defeasance and will be subject to Federal income tax on the same amounts, in the same manner, including as a result of prepayment, and at the same times as would have been the case if such Legal Defeasance had not occurred;

(7) in the case of an election under Section 9.3 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the outstanding Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such Covenant Defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(8) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Article 9 relating to either the Legal Defeasance under Section 9.2 above or the Covenant Defeasance under Section 9.3 hereof (as the case may be) have been complied with;

(9) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit under clause (1) was not made by the Company with the intent of defeating, hindering, delaying or defrauding any creditors of the Company or others; and

(10) the Company shall have paid or duly provided for payment under terms mutually satisfactory to the Company and the Trustee all amounts then due to the Trustee pursuant to Section 7.7 hereof.

*Section 9.5. Deposited Money and U.S. and Foreign Government Obligations to be Held in Trust; Other Miscellaneous Provisions.*

All money, U.S. Government Obligations and Foreign Government Obligations (including the proceeds thereof) deposited with the Trustee pursuant to Section 9.4 hereof in respect of the outstanding Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal, premium, if any, and accrued interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations and Foreign Government Obligations deposited pursuant to Section 9.4 hereof or the principal, premium, if any, and interest received in respect thereof other than any such tax, fee or other charge which by law is

for the account of the Holders of the outstanding Securities.

Anything in this Article 9 to the contrary notwithstanding, but subject to payment of any of its outstanding fees and expenses, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money, U.S. Government Obligations or Foreign Government Obligations held by it as provided in Section 9.4 hereof which, in the opinion of a nationally-recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

#### Section 9.6. *Reinstatement.*

If the Trustee or Paying Agent is unable to apply any money, U.S. Government Obligations or Foreign Government Obligations in accordance with Section 9.1, 9.2, 9.3 or 9.4 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to this Article 9 until such time as the Trustee or Paying Agent is permitted to apply all such money, U.S. Government Obligations or Foreign Government Obligations, as the case may be, in accordance with Section 9.1, 9.2, 9.3 or 9.4 hereof; *provided, however*, that if the Company has made any payment of principal of, premium, if any, or accrued interest on any Securities because of the reinstatement of their obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money, U.S. Government Obligations or Foreign Government Obligations held by the Trustee or Paying Agent.

#### Section 9.7. *Moneys Held By Paying Agent.*

In connection with the satisfaction and discharge of this Indenture, all moneys then held by any Paying Agent under the provisions of this Indenture shall, upon demand of the Company, be paid to the Trustee, or if sufficient moneys have been deposited pursuant to Section 9.1 hereof, to the Company, and thereupon such Paying Agent shall be released from all further liability with respect to such moneys.

#### Section 9.8. *Moneys Held By Trustee.*

Any moneys deposited with the Trustee or any Paying Agent or then held by the Company in trust for the payment of the principal of, or premium, if any, or interest on any Security that are not applied but remain unclaimed by the Holder of such Security for two years after the date upon which the principal of, or premium, if any, or interest on such Security shall have respectively become due and payable shall be repaid to the Company upon Company Request, or if such moneys are then held by the Company in trust, such moneys shall be released from such trust; and the Holder of such Security entitled to receive such payment shall thereafter, as an unsecured general creditor, look only to the Company for the payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money shall thereupon cease; *provided, however*, that the Trustee or any such Paying Agent, before being required to make any such repayment, may, at the expense of the Company, either mail to each

Securityholder affected, at the address shown in the register of the Securities maintained by the Registrar or cause to be published once a week for two successive weeks, in a newspaper published in the English language, customarily published each Business Day and of general circulation in the City of New York, New York, a notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing or publication, any unclaimed balance of such moneys then remaining will be repaid to the Company. After payment to the Company or the release of any money held in trust by the Company, Securityholders entitled to the money must look only to the Company for payment as general creditors unless applicable abandoned property law designates another Person.

**ARTICLE 10**  
**MISCELLANEOUS**

**Section 10.1. Trust Indenture Act Controls.**

If any provision of this Indenture limits, qualifies or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control. If any provision of this Indenture modifies or excludes any provision of the TIA which may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

**Section 10.2. Notices.**

Any notice or communication shall be given in writing and delivered in Person, sent by facsimile (and receipt confirmed by telephone or electronic transmission report), delivered by commercial courier service or mailed by first-class mail, postage prepaid, addressed as follows:

If to the Company:

Biogen Idec Inc.  
14 Cambridge Center  
Cambridge, MA 02142  
Fax: (866) 546-2811  
Attention: Susan H. Alexander, General Counsel

Copy to:

Ropes & Gray LLP  
One International Place  
Boston, Massachusetts 02110  
Fax: (617) 951-7050  
Attention: Keith F. Higgins

If to the Trustee:

The Bank of New York Trust Company, N.A.  
601 Travis Street

18th Floor  
Houston, TX 77002  
Fax: (713) 483-7038  
Attention: Marcella Burgess

The Company or the Trustee by written notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication to the Company or the Trustee shall be deemed to have been given or made as of the date so delivered if personally delivered; when receipt is confirmed by telephone or electronic transmission report, if sent by facsimile; and three (3) Business Days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee).

Any notice or communication mailed to a Securityholder shall be mailed to such Securityholder by first-class mail, postage prepaid, at such Securityholder's address shown on the register kept by the Registrar.

Failure to mail a notice or communication to a Securityholder or any defect in it shall not affect its sufficiency with respect to other Securityholders. If a notice or communication to a Securityholder is mailed in the manner provided above, it shall be deemed duly given, three Business Days after such mailing, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service, or by reason of any other cause, it shall be impossible to mail any notice as required by this Indenture, then such method of notification as shall be made with the approval of the Trustee shall constitute a sufficient mailing of such notice.

In the case of Global Securities, notices or communications to be given to Securityholders shall be given to the Depositary, in accordance with its applicable policies as in effect from time to time.

In addition to the manner provided for in the foregoing provisions, notices or communications to Securityholders shall be given by the Company by release made to Reuters Economic Services and Bloomberg Business News.

*Section 10.3. Communications by Holders with Other Holders.*

Securityholders of any Series may communicate pursuant to TIA Section 312(b) with other Securityholders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or any other Series. The Company, the Trustee, the Registrar and any other Person shall have the protection of TIA Section 312(c).

*Section 10.4. Certificate And Opinion As To Conditions Precedent.*

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel (which shall include the statements set forth in Section 10.5 below) stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

**Section 10.5. Statement Required In Certificate and Opinion.**

Each certificate and opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than pursuant to Section 4.4 hereof) shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, it or he has made such examination or investigation as is necessary to enable it or him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) a statement as to whether or not, in the opinion of such Person, such covenant or condition has been complied with.

**Section 10.6. Rules by Trustee and Agents.**

The Trustee may make reasonable rules for action by or at meetings of Securityholders. The Registrar and Paying Agent may make reasonable rules for their functions.

**Section 10.7. Business Days; Place of Payment.**

The term "Business Day" means any day other than a Saturday, a Sunday or any other day on which banking institutions in The City of New York are authorized or required by law, regulation or executive order to close.

If a payment date is a Legal Holiday at a Place of Payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. "Place of Payment" means the place or places where the principal of and any premium and interest on the Securities of a Series are payable as specified as contemplated by Section 2.2. If the regular record date is a Legal Holiday, the record date shall not be affected.

**Section 10.8. Governing Law.**

**THIS INDENTURE AND THE SECURITIES SHALL BE GOVERNED BY AND**

**CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WITHIN THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.**

**Section 10.9. No Adverse Interpretation of Other Agreements.**

This Indenture may not be used to interpret another indenture, loan, security or debt agreement of the Company or any Subsidiary thereof. No such indenture, loan, security or debt agreement may be used to interpret this Indenture.

**Section 10.10. No Recourse Against Others.**

A director, officer, employee, stockholder or incorporator, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture. Each Securityholder by accepting a Security waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Securities.

**Section 10.11. Successors.**

All covenants and agreements of the Company in this Indenture and the Securities shall bind its successors and assigns, whether so expressed or not. All agreements of the Trustee, any additional trustee and any Paying Agents in this Indenture shall bind their respective successors and assigns.

**Section 10.12. Multiple Counterparts.**

The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent one and the same agreement.

**Section 10.13. Table of Contents, Headings, Etc.**

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

**Section 10.14. Severability.**

Each provision of this Indenture shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purpose of this Indenture or the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and a Holder shall have no claim therefor against any party hereto.

**Section 10.15. Securities In A Foreign Currency.**

Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.2 of this Indenture with respect to a

particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars, then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 10.15, "Market Exchange Rate" shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York. If such Market Exchange Rate is not available for any reason with respect to such currency, the Trustee shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York or quotations from one or more major banks in The City of New York or in the country of issue of the currency in question or such other quotations as the Trustee, upon consultation with the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture.

All decisions and determinations of the Trustee regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in its sole discretion and shall, in the absence of manifest error, be conclusive to the extent permitted by law for all purposes and irrevocably binding upon the Company and all Holders.

#### Section 10.16. *Judgment Currency*.

The Company agrees, to the fullest extent that it may effectively do so under applicable law, that (a) if for the purpose of obtaining judgment in any court it is necessary to convert the sum due in respect of the principal of or interest or premium (if any) or other amount on the Securities of any Series (the "Required Currency") into a currency in which a judgment will be rendered (the "Judgment Currency"), the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the day on which final unappealable judgment is entered, unless such day is not a New York Banking Day, then, the rate of exchange used shall be the rate at which in accordance with normal banking procedures the Trustee could purchase in The City of New York the Required Currency with the Judgment Currency on the New York Banking Day preceding the day on which final unappealable judgment is entered and (b) its obligations under this Indenture to make payments in the Required Currency (i) shall not be discharged or satisfied by any tender, any recovery pursuant to any judgment (whether or not entered in accordance with subsection (a)), in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the actual receipt, by the payee, of the full amount of the Required Currency expressed to be payable in respect of such payments, (ii) shall be enforceable as an alternative or additional cause of action for the purpose of recovering in the Required Currency the amount, if any, by which such actual receipt shall fall short of the full amount of the Required Currency so expressed to be payable, and (iii) shall not be affected by judgment being obtained for any other sum due under this Indenture. For purposes of the foregoing, "New York Banking Day" means any day except a Saturday, Sunday or a legal holiday in The City of New York on which banking institutions are authorized or required by law, regulation or executive order to close.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed, and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

**BIOGEN IDEC INC., as Issuer**

By: /s/ Michael F. Phelps

Name: Michael F. Phelps

Title: Vice President and Treasurer

**THE BANK OF NEW YORK TRUST COMPANY, N.A., as Trustee**

By: /s/ Marcella Burgess

Name: Marcella Burgess

Title: Assistant Vice President

**[Ropes & Gray LLP Letterhead]**

February 26, 2008

Biogen Idec Inc.  
14 Cambridge Center  
Cambridge, MA 02142

Re: Biogen Idec Inc. Registration Statement on Form S-3

Ladies and Gentlemen:

This opinion is furnished to you in connection with the above-referenced registration statement (the "Registration Statement"), filed on or about the date hereof with the Securities and Exchange Commission under the Securities Act of 1933 (the "Act"), for the registration of unsecured debt securities ("the Debt Securities") of Biogen Idec Inc., a Delaware corporation (the "Company").

The Debt Securities are to be issued under an Indenture between the Company and The Bank of New York Trust Company, N.A., as trustee, as supplemented by one or more supplemental indentures (together, the "Indenture"). Certain terms of the Debt Securities remain to be fixed by a Pricing Committee of the Board of Directors pursuant to resolutions of the Board of Directors of the Company.

We have acted as counsel for the Company in connection with the preparation and filing of the Registration Statement. For purposes of this opinion, we have examined and relied upon such documents, records, certificates and other instruments as we have deemed necessary.

When the definitive terms of the Debt Securities have been determined and approved by authorized officers of the Company in accordance with the Indenture and the due authorization thereof by the Board of Directors of the Company and the Pricing Committee thereof, and such Debt Securities have been duly executed and authenticated as provided in the Indenture and delivered against payment therefor, such Debt Securities will be the valid and legally binding obligations of the Company and will be entitled to the benefits of the Indenture, subject to (i) bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the rights and remedies of creditors and (ii) general principles of equity, regardless of whether applied in proceedings in equity or law.

---

Biogen Idec Inc.

-2-

February 26, 2008

We hereby consent to your filing this opinion as an exhibit to the Registration Statement and to the use of our name therein and in any related prospectus or prospectus supplement under the caption "Validity of Notes." In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Securities and Exchange Commission thereunder.

This opinion may be used only in connection with the offer and sale of the Debt Securities while the Registration Statement is in effect.

Very truly yours,

/s/ Ropes & Gray LLP

Ropes & Gray LLP

	Year ended 31-Dec 2007	Year ended 31-Dec 2006	Year ended 31-Dec 2005	Year ended 31-Dec 2004	Year ended 31-Dec 2003
Pre tax income from continuing operations before adjustment for equity investees and cumulative effect of accounting change	\$910,595	\$492,163	\$256,195	\$64,093	\$(880,624)
Less: Interest capitalized	(10,100)	(2,100)	(8,400)	(8,800)	(6,800)
Add back: Minority Interest expense(4)	6,608	6,770			
<b>Total Earnings (as adjusted)</b>	<b>\$907,103</b>	<b>\$496,833</b>	<b>\$247,795</b>	<b>\$55,293</b>	<b>\$(887,424)</b>
<b>Fixed Charges</b>					
Interest Expense	40,500	871	9,647	18,898	15,182
Add: Interest capitalized	10,100	2,100	8,400	8,800	6,800
Interest component of Rent Expense(3)	10,923	8,646	10,626	11,682	4,257
<b>Total Fixed Charges</b>	<b>\$61,523</b>	<b>\$11,617</b>	<b>\$28,673</b>	<b>\$39,380</b>	<b>\$26,239</b>
Total earnings as adjusted plus fixed charges	\$968,626	\$508,450	\$276,468	\$94,673	\$(861,185)
Ratio of earnings to fixed charges (1)	15.74	43.77	9.64	2.40	(2)

- (1) We have computed the ratios of earnings to fixed charges by dividing pre tax income from continuing operations, plus fixed charges, plus amortization of capitalized interest, less earnings of equity investees, less interest capitalized, by fixed charges. Fixed charges consist of interest costs, whether expensed or capitalized, the interest component of rental expense and any amortization of debt premiums, discounts and issuance costs.
- (2) The ratio of earnings to fixed charges is not presented for the year ended December 31, 2003 because our earnings were a net loss of \$887.4 million primarily due to the recording of an in-process research and development expense of \$823.0 million in connection with the merger of Biogen Inc. and Idec Pharmaceuticals Inc.
- (3) The percent of rent included in the calculation is a reasonable approximation of the interest factor.
- (4) For the year ended December 31, 2007, this calculation excludes \$65.0 million allocated to minority interest due to the consolidation of certain variable interest entities. The \$65.0 million represents the fair value of technologies retained by the parent companies of these variable interest entities and offset an equal charge to in process research and development, and resulted in no net impact to our results of operations for the year ended December 31, 2007.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated February 14, 2008 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Biogen Idec Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
Boston, Massachusetts  
February 26, 2008

**FORM T-1**

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

STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE

CHECK IF AN APPLICATION TO DETERMINE  
ELIGIBILITY OF A TRUSTEE PURSUANT TO  
SECTION 305(b)(2)

---

**THE BANK OF NEW YORK TRUST COMPANY, N.A.**

(Exact name of trustee as specified in its charter)

(State of incorporation  
if not a U.S. national bank)

**95-3571558**  
(I.R.S. employer  
identification no.)

**700 South Flower Street**  
Suite 500  
Los Angeles, California  
(Address of principal executive offices)

**90017**  
(Zip code)

---

**BIOGEN IDEC INC.**

(Exact name of obligor as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**33-0112644**  
(I.R.S. employer  
identification no.)

**14 Cambridge Center**  
Cambridge, Massachusetts  
(Address of principal executive offices)

**02142**  
(Zip Code)

---

**Debt Securities**

(Title of the indenture securities)

---

[Table of Contents](#)

**1. General information. Furnish the following information as to the trustee:**

**(a) Name and address of each examining or supervising authority to which it is subject.**

Name	Address
Comptroller of the Currency United States Department of the Treasury	Washington, D.C. 20219
Federal Reserve Bank	San Francisco, California 94105
Federal Deposit Insurance Corporation	Washington, D.C. 20429

**(b) Whether it is authorized to exercise corporate trust powers.**

Yes.

**2. Affiliations with Obligor.**

If the obligor is an affiliate of the trustee, describe each such affiliation.

None.

**3-15. Not applicable.**

**16. List of Exhibits.**

Exhibits identified in parentheses below, on file with the Commission, are incorporated herein by reference as an exhibit hereto, pursuant to Rule 7a-29 under the Trust Indenture Act of 1939 (the "Act") and 17 C.F.R. 229.10(d).

1. A copy of the articles of association of The Bank of New York Trust Company, N.A. (Exhibit 1 to Form T-1 filed with Registration Statement No. 333-121948).
2. A copy of certificate of authority of the trustee to commence business. (Exhibit 2 to Form T-1 filed with Registration Statement No. 333-121948).
3. A copy of the authorization of the trustee to exercise corporate trust powers. (Exhibit 3 to Form T-1 filed with Registration Statement No. 333-121948).
4. A copy of the existing by-laws of the trustee. (Exhibit 4 to Form T-1 filed with Registration Statement No. 333-121948).
5. The consent of the trustee required by Section 321(b) of the Act, filed herewith.
6. A copy of the latest report of condition of the trustee published pursuant to law or to the requirements of its supervising or examining authority.

TABLE OF CONTENTS

[SIGNATURE](#)

---

[Table of Contents](#)

SIGNATURE

Pursuant to the requirements of the Act, the trustee, The Bank of New York Trust Company, N.A., a banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in The City of Houston, and State of Texas, on the 26<sup>th</sup> day of February, 2008.

THE BANK OF NEW YORK TRUST COMPANY, N.A.

By: /s/ Marcella Burgess

Name: Marcella Burgess

Title: Assistant Vice President

**CONSENT OF THE TRUSTEE**

Pursuant to the requirements of Section 321 (b) of the Trust Indenture Act of 1939, and in connection with the proposed issue of Biogen Idec Inc., The Bank of New York Trust Company, N.A. hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon request therefore.

THE BANK OF NEW YORK TRUST COMPANY, N.A.

By: /s/ Marcella Burgess  
Marcella Burgess  
Assistant Vice President

Houston, Texas  
February 26, 2008