JAMES HARDIE INDUSTRIES SE
Form F-4
March 17, 2010

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As filed with the Securities and Exchange Commission on March 17, 2010
Registration No. 333-

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

Form F-4

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

JAMES HARDIE INDUSTRIES SE
(Exact name of registrant as specified in its charter)

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

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered[1]	Amount to be Registered	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price[3]	Amount of Registration Fee[4]
James Hardie Industries SE Ordinary Shares	102,000,000[2]	$6.89	$702,461,760	$50,086

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

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

(3) The proposed maximum aggregate offering price of all of the James Hardie Industries SE shares registered in connection with the Proposal is $702,461,760. Pursuant to Rules 457(f)(1) and 457(c) under the Securities Act and solely for the purpose of calculating the registration fee, the proposed maximum aggregate offering price is equal to the aggregate market value of the approximate number of James Hardie Industries SE ordinary shares to be transformed in the Proposal (calculated as set forth in note (2) above) based upon a market value of $6.89 per James Hardie Industries SE ordinary share, the average of the high and low sale prices per James Hardie Industries SE CUFS on the ASX Limited on March 12, 2010 and converted to United States dollars based on the Federal Reserve Bank of New York foreign exchange rate for Australian dollars on March 12, 2010.

(4) Calculated by multiplying 0.00007130 by the proposed maximum aggregate offering price.

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

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

PRELIMINARY COPY SUBJECT TO COMPLETION, MARCH 17, 2010

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IMPORTANT NOTICES

Terminology

In this Explanatory Memorandum, references to:

we, us, our, the company, Dutch SE, and JHI SE refer to James Hardie Industries SE. We refer to Jam Industries SE when domiciled in Ireland as Irish SE.

James Hardie refers collectively to James Hardie Industries SE and its controlled subsidiaries.

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

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

shareholders refers to holders of CUFS or ADSs.

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

Certain other capitalised terms used in this Explanatory Memorandum have the meanings ascribed to them in the Glossary in Section 18.

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

This Explanatory Memorandum and the Notice of Meetings included herein have been prepared to assist shareholders in deciding how to vote on Stage 2 of the Proposal. You should read this Explanatory Memorandum and the Notice of Meetings in their entirety before making a decision about how to vote on the resolution to be considered at the extraordinary general meeting.

This Explanatory Memorandum contains important information relating to the Proposal. The Notice of Meetings contains important information relating to voting at the extraordinary general meeting, including the record date, the quorum and vote required for approval and how to vote your CUFS or ADSs and the resolution that shareholders are being asked to approve with respect to Stage 2 of the Proposal.

Information Incorporated by Reference

This Explanatory Memorandum incorporates important business and financial information about us by reference and, as a result, this information is not included in or delivered with this Explanatory Memorandum. For a list of those documents that are incorporated by reference into this Explanatory Memorandum, see Incorporation of Certain Documents by Reference in Section 13.

Documents incorporated by reference are available from us upon oral or written request without charge. As we file annual reports and furnish other information to the US Securities and Exchange Commission, you also may obtain documents incorporated by reference into this Explanatory Memorandum from the website of the US Securities and Exchange Commission at the URL (or uniform resource locator) http://www.sec.gov or by requesting them from us by calling the Information Helpline in Australia at 1-800-675-021 (between 8:00 a.m. and 5:00 p.m.

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(AEDT)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (US Central Time)) or in writing by regular and electronic mail at the following address:

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

In order to receive timely delivery of the documents in advance of the extraordinary general meeting for Stage 2 of the Proposal, you should make your request no later than May 26, 2010.

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

Forward-looking Statements

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

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

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

expectations concerning indemnification obligations; and

statements about product or environmental liabilities.

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

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

Forward-looking statements are based on our estimates and assumptions and because forward-looking statements address future results, events and conditions, they, by their very nature, involve inherent risks and uncertainties. Such known and unknown risks, uncertainties and other factors may cause our actual results, performance or other achievements to differ materially from the anticipated results, performance or achievements expressed, projected or implied by these forward-looking statements. These factors, some of which are discussed under Risk Factors beginning on page 15 including those incorporated by reference from our Annual Report on Form 20-F filed with the US Securities and Exchange Commission, include but are not limited to: all matters relating to or arising out of the prior manufacture of products that contained asbestos by our current and former subsidiaries; required contributions to the Asbestos Injuries Compensation Fund and the effect of currency exchange rate movements on the amount recorded in our financial statements as an asbestos liability; compliance with and changes in tax laws and treatments; competition and product pricing in the markets in which we operate; the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings; general economic and market conditions; the supply and cost of raw materials; the success of research and development efforts; reliance on a small number of customers; a customer s inability to pay; compliance with and changes in environmental and health and safety laws; risks of conducting business internationally; the company s proposal to transfer its corporate domicile from The Netherlands to Ireland to become an Irish SE company compliance with and changes in laws and regulations; currency exchange risks; the concentration of our customer base on large format retail customers, distributors and dealers; the effect of natural disasters; changes in our key management personnel; inherent limitations on internal controls; use of accounting estimates; and all other risks identified in our reports filed with Australian, Dutch and US securities agencies and exchanges (as appropriate). We caution that the foregoing list of factors is not exhaustive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made and are statements of our current expectations concerning future results, events and conditions.

You should carefully review all of the information included in this Explanatory Memorandum and the Notice of Meetings, before making a decision on how to vote on Stage 2 of the Proposal to be considered at the extraordinary general meeting.

Intellectual Property

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

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LETTER FROM THE CHAIRMEN

Dear Shareholder: March , 2010

On August 21, 2009, shareholders approved Stage 1 of the two-stage proposal to re-domicile the company, with over 99% of votes cast at the extraordinary general meeting being in favour of the resolution.

Following this vote, on February 19, 2010, James Hardie Industries SE completed its transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) registered in The Netherlands.

We now seek your approval to proceed with Stage 2 of the Proposal, to transform JHI SE to Irish SE by moving our corporate domicile from The Netherlands to Ireland. Your approval of Stage 2 will result in JHI SE becoming subject to Irish law in addition to the SE Regulation.

In connection with the Stage 1 extraordinary general meeting, we received comments on the proposed articles of association for Irish SE. Based on that feedback, we committed to solicit comments on the proposed articles of association for Irish SE prior to presenting them to shareholders for approval in connection with Stage 2.

Since then, we have reviewed the comments we received in connection with Stage 1 and have met with and received comments from investor advisory groups. Following our review of these comments, your directors made a number of changes to the proposed articles of association for Irish SE as described in this Explanatory Memorandum.

We reiterate that implementing the Proposal will not change James Hardie s overall commitment to make contributions to the Asbestos Injuries Compensation Fund under the Amended and Restated Final Funding Agreement. However, if, as seems likely, a contribution is due to the Asbestos Injuries Compensation Fund during the company s financial year ending March 31, 2011, it will be reduced by an amount of up to 35% of the costs associated with the Proposal incurred in the financial year ending March 31, 2010.

Because the capacity of the Asbestos Injuries Compensation Fund to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow, completing the Proposal through implementing Stage 2 is expected to have medium and long-term benefits for the Asbestos Injuries Compensation Fund.

KEY BENEFITS

We need to implement Stage 2 of the Proposal to obtain all of the favourable aspects of the Proposal and avoid the risks and disadvantages of staying in The Netherlands, as described in this Explanatory Memorandum.

Your directors continue to be of the view that implementing Stage 2 of the Proposal is the best course of action for James Hardie and its shareholders at this time because it:

- allows key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets;

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

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

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

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

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SUMMARY

Your directors continue to be of the view that the Proposal is the best course of action at this time for James Hardie and its shareholders.

This Explanatory Memorandum sets out material information relevant to Stage 2. As there are certain risks involved in connection with the implementation of Stage 2, we urge all shareholders to read this document in full. Your vote in favor of the approval of Stage 2 is important for James Hardie and its shareholders.

This Explanatory Memorandum includes a Notice of Meetings for Stage 2 of the Proposal. If shareholders approve Stage 2, your directors anticipate that Stage 2 of the Proposal will be implemented early in the second half of 2010. It is important to implement the Proposal as soon as practicable, as there are risks and costs associated with delay.

Sincerely,

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

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INDICATIVE TIMETABLE

The key dates for consideration and implementation of Stage 2 of the Proposal are shown below. All times referred to are Australian Eastern Time (which we refer to as AET) unless otherwise stated

EVENT	DATE
STAGE 2 OF THE PROPOSAL	
ADR record date for voting at the extraordinary general meeting	Friday, April 23, 2010 at 5:00 p.m. EDT
CUFS record date for voting at the extraordinary general meeting	Thursday, May 27, 2010 at 4:00 p.m.
Extraordinary information meeting of JHI SE in Australia	Friday, May 28, 2010 at 9:00 a.m.
Deadline for submission of Voting Instruction Forms for extraordinary general meeting	No later than 4:00 p.m. on Friday, May 28, 2010
Extraordinary general meeting of JHI SE in The Netherlands	Wednesday, June 2, 2010 at 11:00 a.m. CET

The final timetable will depend on a number of factors, some of which will be outside of our control, including various regulatory filings and approvals (see Key Steps in Connection with the Proposal in Section 1.2).

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

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QUESTIONS AND ANSWERS ABOUT THE PROPOSAL

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

Q1: What is the Proposal? (Section 1)

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

Shareholders approved Stage 1 of the Proposal to transform James Hardie Industries N.V. to a European Company domiciled in The Netherlands with over 99% approval from shareholders voting at the extraordinary general meeting on August 21, 2009. The transformation subsequently was completed on February 19, 2010. Shareholders now are being asked to approve Stage 2 of the Proposal, which involves the relocation of our corporate domicile from The Netherlands to Ireland.

Q2: When and where is the Stage 2 shareholders meeting? (Section 20)

A: The extraordinary general meeting to consider Stage 2 of the Proposal will be held at the company s offices at Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands at 11:00 a.m. Central Europe Time (which we refer to as CET) on June 2, 2010.

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

Q3: Will there be an Information Meeting in connection with the Stage 2 shareholders meeting?

A: An extraordinary information meeting also will be held to enable CUFS holders to attend a meeting in Australia to review Stage 2 of the Proposal and the resolution that is to be considered and voted on at the extraordinary general meeting in The Netherlands. The extraordinary information meeting will be held prior to the extraordinary general meeting at The Auditorium, the Mint, 10 Macquarie Street, Sydney, NSW, Australia at 11:00 a.m. (AET) on May 28, 2010. A number of members of the Boards will participate in the extraordinary information meeting by video or telephone. A live webcast of the extraordinary information meeting will be available on our website.

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

Q4: Who can vote at the shareholders meeting? (Section 20)

A: In order to be eligible to vote on Stage 2, you must be the registered owner or holder (as applicable) of CUFS at 4:00 p.m. (AET) on May 27, 2010 or ADSs at 5:00 p.m. (US Eastern Daylight Saving Time) on April 23, 2010. If you become the registered owner or holder of CUFS or ADSs after these dates, you will not be eligible to vote those CUFS or ADSs at the extraordinary general meeting.

Q5: What are the matters that shareholders will be asked to consider and vote on at the extraordinary general meeting in connection with Stage 2 of the Proposal? (Section 20)

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

the company implement Stage 2 of the Proposal described in the Explanatory Memorandum, as a result of which the company will transfer its corporate domicile from The Netherlands to Ireland;

the company adopt the memorandum and articles of association of Irish SE referred to in the Explanatory Memorandum (and included as an exhibit to the registration statement of which the Explanatory Memorandum

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forms a part) and which are tabled at the meeting and initialed by the Chairman for the purposes of identification, subject to the condition precedent of registration with the Companies Registration Office in Ireland;

any director of the company or any partner of the company s Dutch legal advisors be authorised to apply for the required ministerial declaration of no-objection of the Dutch Ministry of Justice in connection with the amendments made to the articles of association as required under Dutch law;

any director of the company or any partner of the company s Irish legal advisor be authorised to file the Form SE6 with the Irish Companies Registration Office;

the company abolish the merger revaluation reserve established in connection with our 2001 reorganisation and set off the amount at the expense of share premium and retained earnings, which would result in the amounts available to Irish SE for distribution as dividends and to repurchase shares to be substantially the same as for JHI SE;

the execution of any deed, agreement or other document contemplated by Stage 2 of the Proposal as described in this Explanatory Memorandum, or which is necessary or desirable to give effect to Stage 2 of the Proposal (which we refer to as the Stage 2 Proposal Documents), on behalf of the company or any relevant group company is hereby ratified and approved;

any managing director be appointed to represent the company in accordance with the company s articles of association in all matters concerning Stage 2 of the Proposal and the Stage 2 Proposal Documents, including where such matters concern the company or another group company, and notwithstanding that the director may at the same time also be a director of any other group company; and

that the actions of one or more directors relating to Stage 2 of the Proposal up to the date of this meeting are hereby ratified and approved.

Q6: What do I need to do now? (Section 20)

A: After carefully reading and considering the information contained in this Explanatory Memorandum, please follow the instructions for voting the CUFS or ADSs that you hold, which are described in the Notice of Meetings included herein under Information on Voting in Section 20. The manner by which you vote is determined by whether you hold CUFS or ADSs. Although voting is not compulsory, your vote is important and your directors encourage you to vote on Stage 2 of the Proposal.

Q7: Why is James Hardie undertaking Stage 2 of the Proposal now? (Section 3.1)

A: Your directors previously concluded that the Proposal was the best course of action and in the best interests of James Hardie and its shareholders and continue to believe that Stage 2 of the Proposal should be completed, as implementation of Stage 2 will enable us to obtain all the expected benefits of the Proposal, including:

providing key senior management with global responsibilities more opportunities to work directly with our local operations and in our markets. Our business in the US has been adversely affected by the decline in the US housing market and the turmoil within financial and mortgage lending institutions. These challenges make it even more important to have senior management close to our major operations and markets;

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

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

simplifying the company s governance structure to a single board of directors; and

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

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Q8: What is the impact of the Proposal on our asbestos funding arrangements with Asbestos Injuries Compensation Fund? (Section 3.2)

A: The Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund (which we refer to as the AICF) under the Amended and Restated Final Funding Agreement (which we refer to as the AFFA). However, if, as seems likely, a contribution is due to the AICF in our financial year ending March 31, 2011 the costs associated with the Proposal incurred in the financial year ending March 31, 2010 will reduce the amount of the company s contribution. The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow. Completion of the Proposal through the implementation of Stage 2 is expected to have medium and long-term benefits for the AICF, as James Hardie s Irish domicile is anticipated to result in reduced tax payments relative to taxes that would be payable if we remained domiciled in The Netherlands.

On November 7, 2009, the Australian Government announced that it will provide a loan facility of up to A$160 million to the New South Wales Government that will go towards a standby loan facility of up to A$320 million to be made available by the New South Wales Government to the AICF to meet any short-term funding shortfalls. The standby loan facility will be entered into by the New South Wales Government, the AICF and certain of our former companies, Amaca Pty Ltd, Amaba Pty Ltd and ABN 60 Pty Limited.

The AFFA will continue to operate in accordance with the terms negotiated by all parties and the obligation to pay claimants remains with the AICF, and its primary source of funding is expected to continue to be contributions from James Hardie.

Q9: What will happen if I abstain from voting? (Section 20)

A: Any CUFS or ADSs for which no votes are cast effectively will be treated as null votes and will not count toward the voting outcome.

Q10: When do you expect the Proposal to be completed?

A: If shareholders approve Stage 2 of the Proposal, your directors anticipate that Stage 2 will be implemented early in the second half of 2010.

Q11: What happens to James Hardie if Stage 2 of the Proposal is not approved? (Section 3.4)

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

If Stage 2 is not implemented, none of the favourable aspects of the proposed transfer of JHI SE s corporate domicile from The Netherlands to Ireland will be obtained and the risks and disadvantages of staying in The Netherlands described in this Explanatory Memorandum will continue to apply. In connection with the implementation of Stage 1 of the Proposal and the transfer of our intellectual property and treasury and finance operations from The Netherlands, we will have incurred substantially all of the currently estimated project costs of US$63 million, including US$41 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property and treasury and finance operations and our exit from the Financial Risk

Reserve regime in The Netherlands. See Financial and Accounting Impact in Section 1.3 for more information about these expenses, including Dutch tax.

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Q12: Who can answer questions I might have about the Proposal? (Section 12)

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

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

or by calling the Information Helpline in Australia at 1-800-675-021 (between 8:00 a.m. and 5:00 p.m. (AEDT)) or elsewhere in the world at +1-949-367-4900 (between 8:00 a.m. and 5:00 p.m. (US Central Time)). You also may obtain additional information about us from documents filed or furnished with the Australian Securities Exchange and the US Securities and Exchange Commission by following instructions in the section entitled Where You Can Find Additional Information in Section 12.

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SUMMARY

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

James Hardie (see Section 2.3.1)

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In our financial year ending March 31, 2009, we generated net sales in excess of US$1.4 billion. The majority of our building materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of February 28, 2010, we employed 2,398 people worldwide, the majority of whom (1,580) were located in the US.

Our principal executive offices and telephone number are: Atrium, 8th floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands, Telephone: +31 20 301 2980. After implementation of Stage 2, our principal executive offices and telephone number will be Europa House, Second Floor, Harcourt Centre, Harcourt Street, Dublin 2, Republic of Ireland, Telephone: +353 1 411 6924.

The Proposal (see Section 1)

As previously announced, Stage 2 is the second step in the Proposal to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) with our corporate domicile in Ireland.

Pursuant to Stage 1, we completed our transformation to a European Company (*Societas Europaea* (SE)) with our corporate domicile in The Netherlands. In connection with Stage 2, our registered office and head office will move from The Netherlands to Ireland.

In connection with the implementation of Stage 1 of the Proposal, in October 2009, following shareholder approval of Stage 1, we transferred our intellectual property to a Bermudan subsidiary with its tax residence in Ireland and transferred our treasury and finance operations to an Irish subsidiary with its tax residence in Ireland. The transfer of our treasury and finance operations from The Netherlands resulted in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and will require payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due from the transfer of our intellectual property from The Netherlands.

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

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

Following a multi-year review of various alternatives, your directors concluded that the Proposal was the best course of action and in the best interests of James Hardie and its shareholders and continue to believe that Stage 2 of the

Proposal should be completed, as implementation of Stage 2 will enable us to obtain all the benefits of the Proposal, including:

- providing key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets;

- providing more certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty;

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

simplifying our governance structure to a single board of directors; and

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

Required Shareholder Approvals (see Section 1.5)

At the extraordinary general meeting on June 2, 2010, you will be asked to approve Stage 2 of the Proposal, which is the transformation of JHI SE to Irish SE through the relocation of our corporate domicile from The Netherlands to Ireland. Stage 2 of the Proposal requires the approval of 662/3% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented.

Recommendation of Your Directors (see Section 20)

Your directors continue to believe that the Proposal is the best course of action at this time and is in the best interests of James Hardie and its shareholders.

Holdings by our Directors and Officers of CUFS and ADSs (see Section 0)

As of February 28, 2010, your directors and executive officers and their affiliates held 391,739 (or about 0.09%) of our then outstanding CUFS and 3,800 of our then outstanding ADSs (or about 0.52%). As of February 28, 2010 all directors, executive officers and their affiliates as a group, held an aggregate of 0.095% of the outstanding shares entitled to vote at the extraordinary general meeting.

Rights of Shareholders (see Sections 4.4, 4.5 and 4.7)

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

The most significant of the changes in Stage 2 from those applying to Dutch SE include:

holders of 10% of Irish SE s issued share capital, as compared to 1% (which we believe will likely be raised to 3% the first half of 2010) of JHI SE s issued share capital or holders of JHI SE shares representing at least EUR 50 million in value (which we believe will likely be abolished), having the right, subject to complying with specified time periods and providing specified information, to request that the board place a matter on the agenda of any general meeting;

holders of 10% of Irish SE s issued share capital, as compared to either 5% of JHI SE s issued share capital or at least 100 shareholders of JHI SE, having the right to request the board to call an extraordinary general meeting and, subject to complying with specified time periods and providing specified information, to request the board to place items on the agenda for such meeting;

holders of 10% of Irish SE s issued share capital, as compared to any shareholder of JHI SE, having the right, subject to complying with specified time periods and providing specified information, to nominate candidates for election as directors at any general meeting;

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

a person who acquires 80% or more of Irish SE s issued share capital through acceptances of an offer to all shareholders, as compared to 95% of JHI SE s issued share capital, can compel the acquisition of the remaining outstanding issued share capital; and

a change from a two-tiered board to a single-tiered board.

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In connection with the Stage 1 extraordinary general meeting, we received comments on the proposed articles of association for Irish SE. Based on that feedback, we committed to solicit comments on the proposed articles of association for Irish SE prior to presenting them to shareholders for approval in connection with Stage 2.

Since then, we have reviewed the comments we received in connection with Stage 1 and have met with and received comments from a number of groups. The Due Diligence Committee and Supervisory Board reviewed these comments, including considering advice from external counsel about the ability to implement some of the comments under the ASX Listing Rules and Irish law. Following their review, your directors made a number of changes to the proposed articles of association for Irish SE as described in this Explanatory Memorandum.

The most significant changes to the proposed articles of association for Irish SE from the articles previously proposed in connection with Stage 1 of the Proposal are:

Removing the ability of directors of Irish SE to remove a fellow director; this power is now reserved for shareholders;

Simplifying the specified time periods and information required for shareholders to request the board to put items of business on the agenda of general meetings or nominate directors;

Increasing the minimum notice period for all extraordinary general meetings from 14 to 21 days; and

Setting the threshold for shareholders to request the board to put items of business on the agenda of general meetings or nominate directors at 10% of Irish SE s issued share capital.

We encourage you to read Shareholder Input and Comments Regarding Irish SE Articles of Association in Section 4.4, Summary of Key Corporate Law Differences Between JHI SE and Irish SE in Section 4.5 and Principal Differences Between the Takeover Regime under the Articles of Association of JHI SE and the Irish Takeover Rules in Section 4.7 for further details of the consultation process undertaken by the company and a more detailed discussion of these differences.

You will continue to hold the same number of CUFS or ADSs in Irish SE (if Stage 2 of the Proposal is approved and implemented) as you held beforehand. The current certificates and holding statements evidencing your CUFS or ADSs will continue to evidence the same number and kind of securities following implementation of Stage 2 of the Proposal.

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

The Proposal will not change the overall commitment of James Hardie to make contributions to the AICF under the AFFA. However, if, as seems likely, a contribution is due to the AICF in our financial year ending March 31, 2011, it will be reduced by an amount of up to 35% of the costs associated with the Proposal incurred in the financial year ending March 31, 2010.

Whether, and to what extent, the costs associated with the Proposal actually reduce any contribution due to the AICF in our financial year ending March 31, 2011 will ultimately depend on the amount of the contribution otherwise required to be made under the AFFA and the company s net cash provided by operating activities for our financial year ending March 31, 2010 before taking account of these costs.

The capacity of the AICF to satisfy claims is linked to the long-term financial success of James Hardie, especially the company s ability to generate net operating cash flow.

On November 7, 2009, the Australian Government announced that it will provide a loan facility of up to A$160 million to the New South Wales Government that will go towards a standby loan facility of up to A$320 million to be made available by the New South Wales Government to the AICF to meet any short-term funding shortfalls. The standby loan facility will be entered into by the New South Wales Government, the AICF and certain of our former companies, Amaca Pty Ltd, Amaba Pty Ltd and ABN 60 Pty Limited.

In order to authorise the AICF to enter into the standby loan facility, the New South Wales Government has passed the James Hardie Former Subsidiaries (Winding-Up and Administration) Amendment Act 2009 (assented

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on December 14, 2009), which authorises and approves the loan facility agreement, associated guarantees and security, and ensures that the AICF has the authority to repay the loan.

The provision of the standby loan facility to the AICF will be available for drawing for a period of ten years and does not reduce James Hardie s obligations under the AFFA. Drawdowns on the facility will be made once per year or more frequently if needed and the former James Hardie companies will provide security over insurance proceeds in favour of the New South Wales Government.

The AFFA will continue to operate in accordance with the terms negotiated by all parties and the obligation to pay claimants remains with the AICF, and its primary source of funding is expected to continue to be contributions from James Hardie.

Financial and Accounting Impact (see Section 1.3)

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

Transaction and implementation costs in connection with the Proposal and the transfer of our intellectual property and treasury and finance operations currently are calculated to be approximately US$63 million. This includes approximately US$20 million in advisory fees and other expenses incurred in connection with the implementation of Stage 1, and approximately US$41 million in Dutch taxes as a result of a capital gain on the transfer of our intellectual property and treasury and finance operations out of the Financial Risk Reserve regime in The Netherlands and the termination of that regime. The remaining estimated costs of approximately US$2 million consist primarily of advisory fees and other expenses expected to be incurred in connection with the implementation of Stage 2, including costs related to the establishment of a new head office in Ireland.

Primarily due to our utilization of Dutch net operating losses incurred during our financial year ending March 31, 2010, we expect the total cash costs of the Proposal to be approximately US$53 million. Of this approximately US$53 million cash cost, approximately US$10 million was paid in our financial year ending March 31, 2009, approximately US$21 million is expected to be paid in our financial year ending March 31, 2010 and the balance of approximately US$22 million is expected to be paid in our financial year ending March 31, 2011.

Our calculation of the Dutch tax due is based on our correspondence with the Dutch Tax Authority on the Dutch tax consequences of the transfer of our intellectual property and treasury and finance operations from The Netherlands. Once the Company receives tax assessments from the Dutch Tax Authority for our financial years ending March 31, 2010 and March 31, 2011, we will be in a position to complete the calculation of the transaction and implementation costs. Until then, the total costs of the Proposal may differ from our calculation and the amount of that difference could be material.

Our consolidated annual accounts will continue to be prepared under Generally Accepted Accounting Principles applicable in the US (which we refer to as US GAAP). Commencing with the first financial year end after Stage 2 of the Proposal is completed (i.e., year ended March 31, 2011 if Stage 2 is implemented prior to April 1, 2011) in order to comply with Irish law, we also will prepare consolidated annual accounts under modified US GAAP, which is US GAAP to the extent that it is not inconsistent with Irish company law. The annual entity accounts of Irish SE also will be prepared under Generally Accepted Accounting Principles applicable in Ireland (which we refer to as Irish GAAP).

In connection with the approval of Stage 2, we are asking shareholders to approve the abolishment of the merger revaluation reserve established in connection with our 2001 reorganisation and set off the amount at the

expense of share premium and retained earnings in order to maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. If this reclassification is approved in connection with Stage 2 of the Proposal, the amounts available to Irish SE for distribution as dividends and to repurchase shares will be substantially the same as for JHI SE.

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After implementation of Stage 2, Irish SE s ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined based on profits accounted for in the individual accounts of Irish SE, calculated under Irish GAAP. However, as a result of the proposed reclassification referred to above, we do not believe these changes will have a material impact on Irish SE s ability to pay dividends or repurchase shares as compared to JHI SE.

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

Accounting Treatment of the Proposal (see Section 6)

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

Stock Exchange Listings (see Section 3.5)

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

Dissenters Rights (see Section 20)

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

Material Tax Consequences for Shareholders (see Section 8)

For a detailed discussion of the material Australian, US federal, Dutch, Irish and UK tax consequences of Stage 2 of the Proposal for our shareholders, see Material Tax Considerations of the Proposal in Section 8.

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

Notice for CUFS holders and ADS holders entitled to an exemption

Following implementation of Stage 2 of the Proposal, all of Irish SE s shareholders will *prima facie* be subject to Irish dividend withholding tax (See Irish Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 8.4.2).

Shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty may be entitled to an exemption from Irish dividend withholding tax subject to the non-resident declaration procedures described below. However, where such shareholders held their shares on June 23, 2009, they will generally be able to receive dividends without any dividend withholding tax for a period of one year from the date on which Stage 2 of the Proposal is implemented. Shareholders who acquire their shares after that date will not be entitled to this one year grace period and will be subject to the non-resident declaration procedures described below.

After this one-year period, shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty must complete and send to Irish SE a non-resident declaration form in order to

have no Irish dividend withholding tax. If the appropriate declaration is not made, these shareholders will be liable for Irish dividend withholding tax of 20% on dividends paid by Irish SE and may not be entitled to offset this tax. In this case, it would be necessary for shareholders to apply for a refund of the withholding tax directly from the Irish Revenue authorities.

Australian resident shareholders who have not made the appropriate declaration will not be entitled to an offset for the Irish dividend withholding tax against their Australian income tax liability (See Australian Income Tax

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Consequences of the Proposal Dividends and Distributions from us after our transformation to Irish SE in Section 8.1.2.3) and will need to apply for a refund of the withholding tax directly from the Irish Revenue authorities.

The company announced on May 20, 2009 that it would omit the year-end dividend to conserve capital and that, until such time as market and global conditions improve significantly and the level of uncertainty surrounding future industry trends, as well as company-specific contingencies dissipate, it is expected that the company will continue to omit dividends in order to conserve capital.

Notwithstanding this, we recommend that the appropriate declaration is made by all shareholders who do not reside in Ireland. The appropriate declaration forms are available from our website, www.jameshardie.com, select James Hardie Investor Relations.

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

Following implementation of Stage 2 of the Proposal, ADS holders with a registered address in the US will be entitled to an automatic exemption from Irish dividend withholding tax. This means that they will not be required to complete a non-resident declaration form in order to have no Irish dividend withholding tax (See Irish Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 8.4.2).

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SUMMARY SELECTED HISTORICAL CONSOLIDATED FINANCIAL INFORMATION

The following is our summary selected consolidated financial information for each of the years in the five-year period ended March 31, 2009 and the nine-month periods ended December 31, 2008 and December 31, 2009. The data is derived from, and should be read together with our report on Form 20-F filed on June 25, 2009 and our report on Form 6-K furnished on February 12, 2010, which are incorporated by reference into this Explanatory Memorandum. See Where You Can Find Additional Information in Section 12.

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

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

JAMES HARDIE INDUSTRIES N.V.

	Nine Months Ended December 31		Fiscal Year Ended March 31,				
	2009	2008	2009	2008	2007	2006	2005
	(Unaudited)						
	In million US$ (except sales price per unit and per share data)						
Consolidated Statements of Operations Data:							
Net Sales							
USA and Europe Fibre Cement	631.3	740.6	929.3	1,170.5	1,291.2	1,246.7	974.3
Asia Pacific Fibre Cement	218.4	220.7	273.3	298.3	251.7	241.8	236.1
Total net sales	849.7	961.3	1,202.6	1,468.8	1,542.9	1,488.5	1,210.4
Operating (loss) income	(32.8)	334.0	173.6	(36.6)	(86.6)	(434.9)	196.2
Interest expense	(4.8)	(7.4)	(11.2)	(11.1)	(12.0)	(7.2)	(7.3)
Interest income	2.9	5.5	8.2	12.2	5.5	7.0	2.2
Other income (expense)	6.0		(14.8)				(1.3)
(Loss) income from continuing operations before income taxes	(28.7)	332.1	155.8	(35.5)	(93.1)	(435.1)	189.8
Income tax (expense) benefit	(53.9)	(66.2)	(19.5)	(36.1)	243.9	(71.6)	(61.9)
(Loss) income from continuing operations	(82.6)	265.9	136.3	(71.6)	150.8	(506.7)	127.9

Net (loss) income	(82.6)	265.9	136.3	(71.6)	151.7	(506.7)	126.9
(Loss) income from continuing operations per common share basic	(0.19)	0.62	0.32	(0.16)	0.32	(1.10)	0.28
Net (loss) income per common share basic	(0.19)	0.62	0.32	(0.16)	0.33	(1.10)	0.28
(Loss) income from continuing operations per common share diluted	(0.19)	0.61	0.31	(0.16)	0.32	(1.10)	0.28
Net (loss) income per common share diluted	(0.19)	0.61	0.31	(0.16)	0.33	(1.10)	0.28
Dividends paid per share		0.08	0.08	0.27	0.09	0.10	0.03
Book value per share[(1)]	(0.30)	(0.09)	(0.25)	(0.47)	0.55	0.20	1.36
Weighted average number of common shares outstanding							
Basic	432.7	432.2	432.3	455.0	464.6	461.7	458.9
Diluted	432.7	433.5	434.5	455.0	466.4	461.7	461.0
Consolidated Cash Flow Information:							
Net cash provided by (used in) operating activities	198.6	25.3	(45.2)	319.3	(67.1)	238.4	219.4
Net cash used in investing activities	(35.2)	(16.8)	(26.1)	(38.5)	(92.6)	(154.0)	(149.8)
Net cash (used in) provided by financing activities	(122.8)	(0.8)	25.0	(254.4)	(136.4)	118.7	(27.2)

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	Nine Months Ended December 31		Fiscal Year Ended March 31,				
	2009	2008	2009	2008	2007	2006	2005
	(Unaudited)						
	In million US$ (except sales price per unit and per share data)						
Other Data:							
Depreciation and amortization	45.6	41.6	56.4	56.5	50.7	45.3	36.3
Adjusted EBITDA	12.8	375.6	230.0	19.9	(35.9)	(389.6)	232.5
Capital expenditures	35.2	16.8	26.1	38.5	92.1	162.8	153.0
Volume (million square feet)							
USA and Europe Fiber Cement	989.7	1,218.3	1,526.6	1,951.2	2,216.2	2,244.4	1,952.4
Asia Pacific Fiber Cement	292.1	301.4	390.6	398.2	390.8	368.3	376.9
Average sales price per unit (per thousand square feet)							
USA and Europe Fiber Cement	638	608	609	600	583	555	499
Asia Pacific Fiber Cement (A$)	897	877	879	862	842	872	846
Consolidated Balance Sheet Data:							
Net current assets	64.1	60.2	149.7	183.7	259.0	150.8	180.2
Total assets	2,130.9	1,827.0	1,898.7	2,179.9	2,128.1	1,445.4	1,088.9
Total debt	192.0	298.2	324.0	264.5	188.0	302.7	159.3
Common stock	221.0	219.7	219.2	219.7	251.8	253.2	245.8
Shareholders (deficit) equity	(131.1)	(37.5)	(108.7)	(202.6)	258.7	94.9	624.7

(1) Book value per share is calculated by dividing total shareholders (deficit)/equity by common stock issued at December 31, 2009 and 2008 and at March 31, 2009, 2008, 2007, 2006 and 2005, respectively.

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

	Nine Months Ended December 31	Fiscal Year Ended March 31,

	2009	2008	2009	2008	2007	2006	2005
	(Unaudited)						
				In million US$			
Net cash provided by (used in) operating activities	198.6	25.3	(45.2)	319.3	(67.1)	238.4	219.4
Adjustments to reconcile net (loss) income to net cash provided by (used in) operating activities	(296.5)	172.8	(3.5)	(318.9)	4.5	(789.1)	(60.8)
Change in operating assets and liabilities, net	15.3	67.8	185.0	(72.0)	214.3	44.0	(31.7)
Net (loss) income	(82.6)	265.9	136.3	(71.6)	151.7	(506.7)	126.9
Loss from discontinued operations							1.0
Cumulative effect of change in accounting principle					(0.9)		
Income tax expense (benefit)	53.9	66.2	19.5	36.1	(243.9)	71.6	61.9
Interest expense	4.8	7.4	11.2	11.1	12.0	7.2	7.3
Interest income	(2.9)	(5.5)	(8.2)	(12.2)	(5.5)	(7.0)	(2.2)
Other (income) expense	(6.0)		14.8				1.3
Depreciation and amortization	45.6	41.6	56.4	56.5	50.7	45.3	36.3
Adjusted EBITDA	12.8	375.6	230.0	19.9	(35.9)	(389.6)	232.5

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

MARKET PRICE INFORMATION

Our securities, in the form of:

CUFS trade on the ASX; and

ADSs trade on the NYSE,

each under the symbol JHX.

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

as reported on ASX for CUFS; and

as reported on the NYSE for ADSs.

In each case, the prices quoted are given as of:

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

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

	James Hardie	
	CUFS (A$)	**ADSs (US$)**
June 22, 2009	$ 4.20	$ 16.18
March 16, 2010	$ 7.41	$ 34.20

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

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RISK FACTORS

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

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

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

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

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

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

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

Other than the Financial Risk Reserve regime, these factors will continue to drive James Hardie s effective tax rate. Whether James Hardie implements the Proposal or remains in The Netherlands, we cannot provide any assurance as to what our effective tax rate will be in the future.

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

In connection with the Proposal, we requested and received certain revenue rulings from Irish and Dutch Revenue authorities, which are described in further detail in this Explanatory Memorandum (see Revenue Rulings in Section 5). Revenue rulings represent advice received from taxing authorities as to the tax consequences of particular

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

One of the rulings received from the Irish Revenue authorities confirms, among other things, that so long as Irish SE is centrally managed and controlled in Ireland, it will be a tax resident of Ireland once Stage 2 of the Proposal has been approved and implemented. The ruling received from the Dutch Revenue authorities confirms, among other things, that if the Proposal is implemented, Irish SE will be no longer subject to Dutch corporate income tax (except on Dutch source income) nor Dutch dividend withholding tax as long as Irish SE remains an Irish tax resident for purposes of The Netherlands/Ireland Treaty. Two of the Irish Revenue authorities other rulings

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relate to the tax status in Ireland of two of our subsidiaries to which our intellectual property and our treasury and finance operations have been transferred in connection with the Proposal.

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

If Irish SE fails to satisfy the requirement that it be centrally managed and controlled in Ireland because it fails to operate in the manner set out in the ruling from the Irish Revenue authorities or otherwise, it may not qualify as an Irish tax resident for the purposes of the US/Ireland Treaty and The Netherlands/Ireland Treaty. If this occurred, Irish SE would not receive some or all of the anticipated benefits under the Proposal. In such circumstances, Irish SE also could be subject to tax in another jurisdiction, including The Netherlands. Irish SE or its subsidiaries may also in the future fail to operate in a manner consistent with other facts upon which our rulings are based. In such event, the conclusions reached in the revenue rulings would no longer apply and we may not receive some or all of the anticipated benefits of the Proposal. See Revenue Rulings in Section 5.

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

While the US/Ireland Treaty contains an article regarding limitations on benefits (which requires the relevant person claiming relief to be an Irish resident who meets one or more requirements set out in the treaty), the limitations of benefits article in the US/Ireland Treaty does not presently contain an equivalent to the substantial presence requirement included in the US/Netherlands Treaty. See The US/Netherlands Treaty and The US IRS 30-Day Letter in Sections 2.2.2 and 2.2.3, respectively, for a further description of substantial presence, as that term is used in the context of the US/Netherlands Treaty.

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

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

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

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

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

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Certain of the actual tax consequences of the Proposal to Australian tax resident shareholders may differ from those described in this Explanatory Memorandum.

In connection with the Proposal, we have received a final class ruling from the Australian Taxation Office that no capital gain or capital loss will arise under the Australian capital gains tax provisions for Australian tax resident shareholders who hold their shares or CUFS on capital account as a result of the Proposal.

We also have received an opinion from PricewaterhouseCoopers LLP, our Australian tax advisor, relating to other tax consequences to Australian shareholders that hold their shares or CUFS on capital account. However, this opinion is subject to a degree of uncertainty because there can be no assurance that the Australian Taxation Office would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described in Sections 8.1.1, 8.1.2.3, 8.1.2.4 and 8.1.2.5. As a result, there is a risk that the actual tax consequences to Australian shareholders with respect to the matters described in these sections could be different than those described in the sections and any such differences could be adverse to Australian shareholders.

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

More significant changes to the rights of shareholders will occur upon implementation of Stage 2 of the Proposal as compared to Stage 1. Irish SE will be a company registered under the laws of Ireland and the rights of holders of Irish SE securities will be governed by Irish company law, the SE Regulation and the memorandum and articles of association of Irish SE. Due to the differences between Dutch and Irish laws and the differences between our constituent documents both before and after implementing Stage 2 of the Proposal, your rights as a shareholder will change.

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

For more information regarding these differences and the changes in the rights for shareholders see Summary of Key Corporate Law Differences Between JHI SE and Irish SE in Section 4.4.

In connection with the implementation of Stage 1, we and certain of our subsidiaries were required to negotiate the terms of future employee involvement in JHI SE and certain of its subsidiaries with SNBs representing employees from EEA member states in which James Hardie operates. These negotiations resulted in an agreement that requires us, among other things, to provide information to employees annually and upon certain other events and for us to consult with employees on these matters.

Under the SE Regulation and other relevant legislation, formation of an SE through merger requires the companies involved in the merger to enter into negotiations with a special negotiating body (which we refer to as the SNB), made up of employee representatives in EEA member states to come to an arrangement on future employee involvement in the SE. As part of the process, we and certain of our subsidiaries provided our European employees with the opportunity to nominate and elect employees to be part of the SNB. As a result of the SNB process, we and certain of our subsidiaries have entered into an agreement on the involvement of employees materially in accordance with the Standard Rules (which we define in Section 3.9) governing the provision of information to and consultation with our European employees. The agreement generally provides that the management of JHI SE and certain of our subsidiaries will provide information to our European employees regarding Material Matters (which we describe in further detail in Section 3.9) both annually and as such matters may arise. The agreement also provides that we will, subject to certain conditions, provide additional information and engage in a dialogue and exchange of views with those European employees who express an interest in these communications in a manner and with a content that

allows those employees to express an opinion on the Material Matters in such a way that their opinion may be taken into account in our decision-making process. We also have agreed that we will convene a meeting with non-EEA member state employees to discuss information related to Material Matters.

As contemplated by the agreement, we provided notice to, and will consult with, our European employees regarding the migration of our corporate seat from The Netherlands to Ireland.

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While we do not expect that the entry into the employee involvement agreement will result in a material change to our governance or the way James Hardie runs its business, we have not operated under this type of agreement before and there can be no assurance that it will not affect our governance or decision making process.

For more information about the agreement on the involvement of employees, see Agreement on the Involvement of Employees in Section 3.9.

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

In connection with the implementation of Stage 2 of the Proposal, our Supervisory and Managing Boards will be replaced with a single board of Irish SE, which, over time, is expected to consist of eight non-executive directors and one executive director. All of your seven directors currently serving on the Supervisory Board will continue as non-executive directors of Irish SE, with one new director expected to be added to the board of Irish SE over time. Our Supervisory Board includes one director that was appointed following shareholder approval of Stage 1.

Only one of the existing seven directors on our Supervisory Board who will continue as a director of Irish SE has served more than four years. The balance of the Irish SE board, other than our CEO, will be made up of directors with less than four years experience with James Hardie. The changes to our board structure and composition as a result of the implementation of the Proposal could for a period of time impact the effectiveness of your directors and of board-level decision-making at Irish SE.

For more information about our board structure and the composition of our boards, see Corporate Governance in Section 4.3.

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

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

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

There is a possibility that, despite certain covenants agreed to by the New South Wales Government in the AFFA and the standby loan arrangements, adverse action could be directed against us by one or more of the New South Wales Government, the Government of the Commonwealth of Australia (which we refer to as the Australian Commonwealth Government), governments of the other states or territories of Australia or any other governments, unions or union representative groups, or asbestos disease groups in relation to the asbestos liabilities in respect of which the AICF has

been established. Such action might arise as a result of the costs of the Proposal reducing the amounts available for contribution under the AFFA in the financial year following implementation of the Proposal, particularly if the AICF does not have sufficient funding in future years to meet obligations to claimants or requires additional loans to meet obligations to claimants. This risk is compounded by other factors adversely affecting our net operating cash flow, such as the difficult trading conditions we currently face in our key

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markets and the payments we have made, and may make in the future, to taxation authorities in respect of prior taxation years.

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

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

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

Implementing Stage 2 of the Proposal requires the expiry of a two-month period after publication of the transfer proposal relating to Stage 2 (which will expire on May 3, 2010) without opposition from either (1) the company s creditors to the change of corporate domicile to Ireland and the satisfactory resolution of any creditor objections, (2) the Dutch Ministry of Justice based on grounds of public interest or (3) the Dutch Authority for the Financial Markets (*Stichting Autoriteit Financiële Markten*) (which we refer to as the AFM). In addition, a Dutch civil law notary must issue a certificate attesting to the completion of the acts and formalities required to be accomplished before the move to Ireland and the certificate must be submitted to the Companies Registration Office of Ireland, together with appropriate filing documentation.

With respect to Dutch regulatory approvals required for Stage 2 of the Proposal, upon the advice of the Dutch civil law notary, we are seeking a statement of no objection from the Dutch Ministry of Finance in connection with the implementation of Stage 2, which we also sought and received in connection with Stage 1. In the event that the statement of no objection is not received from the Dutch Ministry of Finance, we may be delayed or prevented from implementing Stage 2 of the Proposal as described in this Explanatory Memorandum.

In addition, relevant state or foreign governmental authorities could revoke, fail to provide or challenge or seek to block Stage 2 of the Proposal, as such authority deems necessary or desirable in the public interest. Moreover, in some jurisdictions, a third party could initiate a private action challenging or seeking to enjoin Stage 2 of the Proposal, before or after it is implemented. We cannot be sure that a challenge to Stage 2 of the Proposal will not be made or that, if a challenge is made, our position will prevail. For a full description of the regulatory approvals required for Stage 2 of the Proposal, see Key Steps in Connection with the Proposal in Section 1.2.

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

In addition to the required shareholder approval, consummation of Stage 2 of the Proposal is subject to several other conditions, some of which may prevent, delay or otherwise materially adversely affect its implementation. Although we expect that these conditions will be satisfied in a timely fashion, we cannot predict whether and when these other conditions will be satisfied. Any delay in implementing Stage 2 of the Proposal may significantly reduce some or all of the expected benefits from the Proposal and/or result in material increases to the estimated transaction and implementation costs.

Stage 2 of the Proposal may not proceed, in which event we will not receive the anticipated benefits from the Proposal.

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

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If Stage 2 is not implemented, none of the favourable aspects of Stage 2 of the Proposal will be obtained and the risks and adverse consequences for our staying in The Netherlands will continue to apply, including the requirement for our key senior managers with global responsibilities to spend a significant amount of their time in The Netherlands and the uncertainty regarding our tax obligations as a result of the US IRS interpretation of the application of the US/Netherlands Treaty to James Hardie. In such event, we will remain a Dutch SE and remain exposed to the risk of future adverse changes in Dutch law and we will have incurred significant transaction and implementation costs, as well as the diversion of management resources.

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

Implementing the Proposal and relocating our corporate headquarters from The Netherlands to Ireland might be disruptive.

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

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

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RECENT DEVELOPMENTS

In December 2009, we refinanced US$130 million in facilities, which previously had maturity dates in or prior to June 2010. The maturity date of these new facilities is in December 2012.

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1. THE PROPOSAL

1.1. Summary of Terms of the Proposal

As previously announced, Stage 2 is the second step in the Proposal to effect our transformation from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) with our corporate domicile in Ireland.

Pursuant to Stage 1, we completed our transformation to a European Company (*Societas Europaea* (SE)) with our corporate domicile in The Netherlands. In connection with Stage 2, our registered office and head office will move from The Netherlands to Ireland and we will become Irish SE.

In connection with the implementation of Stage 1 of the Proposal, in October 2009, following shareholder approval of Stage 1, we transferred our intellectual property to a Bermudan subsidiary with its tax residence in Ireland and transferred our treasury and finance operations to an Irish subsidiary. The transfer of our treasury and finance operations from The Netherlands resulted in the early termination of our participation in the Financial Risk Reserve regime in The Netherlands and required the payment of all Dutch tax due on the balance remaining in our Financial Risk Reserve account at that time, including tax due on the transfer of our intellectual property from The Netherlands.

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

1.2. Key Steps in Connection with the Proposal

1.2.1. Stage 2

Our directors have approved Stage 2. The key remaining steps that must be satisfied to implement Stage 2 of the Proposal are:

expiry of a two-month period after publication of the proposal to transfer the corporate domicile from The Netherlands to Ireland (which will expire on May 3, 2010), allowing any creditors to object to the change in corporate domicile to Ireland and to allow for satisfactory resolution of any creditor objections;

expiry of a two-month period after publication of the transfer proposal relating to Stage 2 (which will expire on May 3, 2010) without opposition from the Dutch Ministry of Justice based on grounds of public interest;

expiry of a two-month period after publication of the transfer proposal relating to Stage 2 (which will expire on May 3, 2010) without opposition from the AFM;

shareholder approval for Stage 2, which includes the abolishment of our merger revaluation reserve (see Financial and Accounting Impact in Section 1.3); and

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

With respect to Dutch regulatory approvals required for Stage 2 of the Proposal, upon the advice of the Dutch civil law notary, we are seeking a statement of no objection from the Dutch Ministry of Finance in connection with the implementation of Stage 2, which we also sought and received in connection with Stage 1. With respect to Dutch regulatory approvals required for Stage 2 of the Proposal, upon the advice of the Dutch civil law notary, we are seeking a statement of no objection from the Dutch Ministry of Finance in connection with the implementation of Stage 2, which we also sought and received in connection with Stage 1. In the event that the statement of no objection is not received from the Dutch Ministry of Finance, we may be delayed or prevented from implementing Stage 2 of the Proposal as described in this Explanatory Memorandum.

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1.3. Financial and Accounting Impact

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

Transaction and implementation costs in connection with the Proposal and the transfer of our intellectual property and treasury and finance operations currently are calculated to be approximately US$63 million. This includes approximately US$20 million in advisory fees and other expenses incurred in connection with the implementation of Stage 1, and approximately US$41 million in Dutch taxes as a result of a capital gain on the transfer of our intellectual property and treasury and finance operations out of the Financial Risk Reserve regime in The Netherlands and the termination of that regime. The remaining estimated costs of approximately US$2 million consist primarily of advisory fees and other expenses expected to be incurred in connection with the implementation of Stage 2, including costs related to the establishment of a new head office in Ireland.

Primarily due to our utilization of Dutch net operating losses incurred during our financial year ending March 31, 2010, we expect the total cash costs of the Proposal to be approximately US$53 million. Of this approximately US$53 million cash cost, approximately US$10 million was paid in our financial year ending March 31, 2009, approximately US$21 million is expected to be paid in our financial year ending March 31, 2010 and the balance of approximately US$22 million is expected to be paid in our financial year ending March 31, 2011.

The Dutch tax charge of approximately US$41 million will be capitalized as a non-current asset and is being amortized to tax expense on the straight-line method over the life of the transferred assets of approximately 15 years.

Our calculation of the Dutch tax due is based on our correspondence with the Dutch Tax Authority on the Dutch tax consequences of the transfer of our intellectual property and treasury and finance operations from The Netherlands. Once the Company receives tax assessments from the Dutch Tax Authority for our financial years ending March 31, 2010 and March 31, 2011, we will be in a position to complete the calculation of the transaction and implementation costs. Until then, the total costs of the Proposal may differ from our calculation and the amount of that difference could be material.

Our consolidated annual accounts will continue to be prepared under US GAAP. Commencing with the first financial year end after Stage 2 is completed (i.e., year ended March 31, 2011 if Stage 2 is implemented prior to April 1, 2011) in order to comply with Irish law, we also will prepare consolidated annual accounts under modified US GAAP, which is US GAAP to the extent that it is not inconsistent with Irish company law. The annual entity accounts of Irish SE will be prepared under Irish GAAP.

In connection with our 2001 reorganisation (See The 2001 and 2003 Reorganisations in Section 2.1), a negative merger revaluation reserve was recorded in the company s financial statements in order to maintain the historical cost bases of our consolidated net assets from directly before the 2001 reorganisation. Under Dutch and Irish company law, the merger revaluation reserve is included in the calculation of amounts available for distribution to shareholders by way of dividend or repurchase of shares. In The Netherlands, the share premium reserve also is included in such calculation. In Ireland, share premium reserve is not included in such calculation, which would result in a material reduction in the amount available for distribution to shareholders following our transformation to Irish SE in Stage 2.

As part of shareholder approval for Stage 2, you are being asked to approve the abolishment of the merger revaluation reserve and set off the amount at the expense of share premium and retained earnings. After implementation of Stage 2, our ability to pay dividends and repurchase shares will be subject to Irish company law and will be determined

based on our profits calculated under Irish GAAP. However, if this reclassification is approved in connection with Stage 2, we do not believe these changes will have a material impact on our ability to pay dividends or repurchase shares.

1.4. Holdings of CUFS and ADSs through the Proposal

Shareholders will continue to hold the same number of CUFS or ADSs in Irish SE if Stage 2 is approved and implemented as they held beforehand. No action is required of shareholders in respect of their certificates or holding

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statements in connection with the Proposal. If the Proposal is approved and implemented, shareholders current certificates or holding statements for our securities will remain effective and continue to represent their holdings in Irish SE until new holding statements are issued in the ordinary course as a result of future changes in security holdings.

1.5. Required Votes for Stage 2 of the Proposal

Stage 2 of the Proposal requires the approval of 662/3% of shareholder votes cast at a properly held meeting at which at least 5% of our issued share capital is present or represented.

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2. BACKGROUND OF THE PROPOSAL AND RELATED MATTERS

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

2.1. The 2001 and 2003 Reorganisations

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

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

2.2. Implementation of Stage 1 of the Proposal and Transfer of Intellectual Property and Treasury and Finance Operations

In June 2009, we announced the Proposal and our plans to transform from a public limited liability corporation registered in The Netherlands (*Naamloze Vennootschap* (NV)) to a European Company (*Societas Europaea* (SE)) with our corporate domicile in Ireland.

In February 2010, following shareholder approval, we implemented Stage 1 of the Proposal. As set out in the Stage 1 explanatory memorandum, prior to this, in October 2009 we transferred our intellectual property to a Bermudan subsidiary with its tax residence in Ireland and transferred our treasury and finance operations to an Irish subsidiary that is tax resident in Ireland.

2.2.1. The Netherlands Financial Risk Reserve Regime

Prior to the transfer of our intellectual property and treasury and finance operations from The Netherlands, we derived commercial and tax benefits from the group finance operations of our Netherlands-based finance subsidiary through rulings from the Dutch Revenue authorities allowing that subsidiary to set aside certain amounts in a Financial Risk Reserve account subject to the Financial Risk Reserve regime. The Financial Risk Reserve Regime adopted by the tax authorities in The Netherlands permitted us to be taxed at a rate lower than the statutory rate of Dutch corporate tax for a percentage of qualifying financing income, the gain from the disposal of intellectual property and qualifying equity contributions used to finance capital and certain other expenditures. The favourable tax benefits provided under the Financial Risk Reserve regime are due to expire on December 31, 2010.

On September 15, 2009, the Dutch government announced a tax bill proposing the liberalization of the patent box regime, which was proposed to be re-named the innovation box as part of the 2010 budget. The patent box was first introduced in January 2008 as a special regime for income derived from certain self-developed intangibles. Under this regime, if a company had internally developed an intangible asset for which a patent had been granted, or from 2008 onward, for which a special research and development certificate had been issued by a Dutch government agency, the company could elect to apply the patent box regime for income received from that qualifying intangible asset and that income would then be taxable at an effective tax rate of 10%, subject to certain conditions and limitations. In its 2010 Budget, the Dutch government announced that the effective tax rate for the innovation box would be lowered to 5% from January 1, 2010 onward. In addition, under the proposal different limits for patented and un-patented (research

and development certificated) assets would be removed, resulting in a wider scope of the innovation box regime. This proposal was enacted in December 2009 and has entered into force as from January 1, 2010. It appears that because our research and development is carried out by the contract research and development centers operated by us in the US and Australia, we would not have qualified for the innovation box so that the current statutory rate of 25.5% would have applied to royalty and finance income received after our exit from the FRR regime if our intellectual property and loan portfolio had remained in The Netherlands.

More importantly, this legislative change did not address permitting our senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets, providing greater certainty for James Hardie to obtain benefits under the US/Netherlands treaty or increasing our flexibility to undertake

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certain transactions in the future. This legislative change also did not address the issue that any future transfer of our intellectual property from The Netherlands or a future restructuring or other transaction that resulted in such a transfer would likely result in more Dutch tax cost than the recently completed transfer.

We previously had considered remaining domiciled in The Netherlands and moving only our intellectual property and loan portfolio to another jurisdiction in the EU. While this strategy could have addressed the issue of the expiration of the Financial Risk Reserve regime in 2010 and, accordingly, the expiration of the favourable treatment of group royalty and finance income, it would not have addressed other issues, including allowing key senior managers with global responsibility to spend more time with James Hardie s operations and in its markets, providing greater certainty for us to obtain benefits under the US/Ireland Treaty than under the US/Netherlands Treaty and increasing James Hardie s flexibility in the future to undertake certain transactions, which directors believe expands our strategic options.

2.2.2. The US/Netherlands Treaty

As a tax resident of The Netherlands, we have received and, as long as we are registered in The Netherlands, we believe are entitled to receive substantial tax benefits under the US/Netherlands Treaty, which we believe provides for no US withholding tax on dividends, interest and royalties paid by our US subsidiaries to us or our subsidiaries, subject to certain conditions being met, in The Netherlands.

2.2.3. The US IRS 30-Day Letter

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

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

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

2.3. Our Business and Residency Requirements

2.3.1. Our Business

Through our network of subsidiaries, we manufacture building materials in the US, Australia, New Zealand and the Philippines. In our financial year ending March 31, 2009, we generated net sales in excess of US$1.4 billion. The majority of our building materials manufacturing capacity (86%) was located in the US and the US market also accounted for almost 80% of net sales to customers. As of February 28, 2010, we employed 2,398 people worldwide, the majority of whom (1,580) were located in the US.

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

2.3.2. Our Residency Requirements

To satisfy the requirements of the amended US/Netherlands Treaty, we moved our Chief Executive Officer, Chief Financial Officer and General Counsel as well as our head office to The Netherlands. In addition:

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

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

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

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

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

2.4. Features of Dutch Company Law

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

By way of example, Dutch company law:

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

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

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

only permits a single board structure in which we could allocate executive duties to our existing Managing Board members and supervisory duties to our existing Supervisory Board members if all members of the single board would in principle be subject to collective liability for the acts or omissions of any member. However, a proposal has been submitted to parliament for a single board structure in The Netherlands that would mitigate this collective liability.

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The two step implementation of the Proposal, by which we transformed to Dutch SE in Stage 1 and intend to transform to Irish SE in Stage 2, is a way to achieve this reorganisation within the limits of Dutch company law. Upon the implementation of Stage 2, we will cease to be subject to Dutch company law and instead (as Irish SE) will become subject to Irish law in addition to the SE Regulation. A summary of the key differences between Dutch and Irish law is described under the heading Summary of Key Corporate Law Differences Between JHI SE and Irish SE in Section 4.4.

2.5. Features of Irish Company Law

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

By way of example, Irish company law:

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

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

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

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3. IMPORTANT CONSIDERATIONS FOR SHAREHOLDERS

3.1. Key Benefits

The Proposal provides the following key benefits:

- allows key senior managers with global responsibilities to spend more time with James Hardie s operations and in its markets;
- provides greater certainty for James Hardie to obtain benefits under the US/Ireland Treaty than is the case under the US/Netherlands Treaty. In addition, under current law Irish SE would be eligible for a 0% withholding tax rate on royalty and interest payments made from its subsidiaries in the US to Irish SE and its subsidiaries in Ireland;
- increases our flexibility to undertake certain transactions under Irish company law, which your directors believe expands our future strategic options;
- simplifies our governance structure to a single board of directors; and
- permits most shareholders to be eligible to receive dividends not subject to withholding tax.

Firstly, the amended US/Netherlands Treaty s primary place of management and control test requires key senior management with global responsibilities to spend considerable time in The Netherlands beyond a level required to effectively manage James Hardie s global operations as described under the heading Our Business and Residency Requirements in Section 2.3. The Proposal to move our corporate domicile to Ireland would permit our key senior management with global responsibilities to be free to spend more time with our operations and in our markets.

Secondly, the Proposal addresses the issues previously raised by the US IRS as to whether we qualify for treaty benefits under the amended US/Netherlands Treaty, because the US/Ireland Treaty does not contain the same primary place of management and control test. As a result, the requirements for treaty benefits under the US/Ireland Treaty are less subjective, clearer and more settled. Those requirements include that Irish SE be a tax resident of Ireland and that the principal class of its shares satisfies certain minimum trading requirements on one or more recognised stock exchanges (which include both the ASX and the NYSE). In light of the ruling we received from the Irish Revenue authorities relating to Irish SE qualifying as a tax resident of Ireland (see Irish Ruling Requests in Section 5.2) and our assessment that we believe we will be able to operate in the manner set out in the rulings to qualify as an Irish tax resident and that Irish SE securities will continue to be quoted for trading, and, we expect, will continue to meet the trading requirements on both the ASX and the NYSE, we believe that Irish SE will satisfy the requirements for treaty benefits. We also believe that the objective nature of such requirements reduces the likelihood of successful challenge to Irish SE s qualifications under the current US/Ireland Treaty.

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

compulsory acquisition and does not provide for schemes of arrangement. The range of possible future strategic options available as an Irish SE, as compared to those existing under Dutch company law, should allow James Hardie increased flexibility, even in the event the US/Ireland Treaty were to be changed in the future.

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

Finally, dividends paid by Irish SE to most shareholders (who are resident in Australia or the US) will be eligible to be free from dividend withholding tax if certain exemptions apply and the shareholder has provided the

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necessary documentation. (See Irish SE Shareholders Taxation in Section 8.4.2.) This compares favourably to the current situation under Dutch law where dividends paid to:

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

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

However, other shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty and who do not reside in Ireland will be subject to Irish dividend withholding tax at a rate of 20% unless such shareholder completes and sends to Irish SE a non-resident declaration form in order to avoid such tax (see Irish Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 8.4.2). Depending on the laws of their place of residence, such shareholders might be able to obtain a tax credit for that tax.

With these key benefits in mind and the continued uncertainty regarding the application of the US/Netherlands Treaty, your directors previously explored a range of alternative options, and continue to be of the view that the best course of action at this time for James Hardie and its shareholders is to implement Stage 2 of the Proposal, thereby moving our corporate domicile from The Netherlands to Ireland.

3.2. Impact on Asbestos Funding Arrangements with AICF

3.2.1. AFFA

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

On November 7, 2009, the Australian Government announced that it will provide a loan facility of up to A$160 million to the New South Wales Government that will go towards a standby loan facility of up to A$320 million to be made available by the New South Wales Government to the AICF to meet any short-term funding shortfalls. The standby loan facility will be entered into by the New South Wales Government, the AICF and certain of our former companies, Amaca Pty Ltd, Amaba Pty Ltd and ABN 60 Pty Limited.

In order to authorise the AICF to enter into the standby loan facility, the New South Wales Government has passed the James Hardie Former Subsidiaries (Winding-Up and Administration) Amendment Act 2009 (assented on December 14, 2009), which authorises and approves the loan facility agreement, associated guarantees and security, and ensures that the AICF has the authority to repay the loan.

The provision of the standby loan facility to the AICF will be available for drawing for a period of ten years and does not reduce James Hardie s obligations under the AFFA. Drawdowns on the facility will be made once per year or more frequently if needed and the former James Hardie companies will provide security over insurance proceeds in favour of the New South Wales Government.

The AFFA will continue to operate in accordance with the terms negotiated by all parties and the obligation to pay claimants remains with the AICF, and its primary source of funding is expected to continue to be contributions from James Hardie.

3.2.2. AFFA Deed of Confirmation

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

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3.2.3. Funding Obligations

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

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

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

The initial funding contribution of A$184.3 million was made to the AICF in February 2007. No contribution was required to be made under the AFFA in our financial year ending March 31, 2008. Further contributions were made on a quarterly basis in July and October 2008 and in January and March 2009, totaling A$118.0 million (inclusive of interest). No contribution was required to be made under the AFFA in our financial year ending March 31, 2010. Based on our results to date in the financial year ending March 31, 2010, we anticipate that a contribution will be made in calendar year 2010.

Transaction and implementation costs in connection with the Proposal and the transfer of our intellectual property and treasury and finance operations currently are calculated to be approximately US$63 million. This includes approximately US$20 million in advisory fees and other expenses incurred in connection with the implementation of Stage 1, and approximately US$41 million in Dutch taxes as a result of a capital gain on the transfer of our intellectual property and treasury and finance operations out of the Financial Risk Reserve regime in The Netherlands and the termination of that regime. The remaining estimated costs of approximately US$2 million consist primarily of advisory fees and other expenses expected to be incurred in connection with the implementation of Stage 2, including costs related to the establishment of a new head office in Ireland. Approximately US$10 million of these costs incurred in connection with Stage 1 were paid in the financial year ending March 31, 2009 and had no effect on the amount of the contribution required to be made to the AICF in July 2009 due to our negative free cash flow in the financial year ending March 31, 2009. Approximately US$21 million of these costs incurred in connection with the Proposal are expected to be paid in the financial year ending March 31, 2010 and will reduce our free cash flow for that year, and therefore will reduce the amount of contributions to the AICF in the following year (i.e., the contribution due in July 2010). Any reduction will be a maximum of 35% of the costs paid in the financial year ending March 31, 2010. Based on our current estimate of the aggregate costs, those costs will have a maximum impact on contributions to the AICF of US$7.35 million and may have a lesser impact depending on the level of our free cash flow for the financial year ending March 31, 2010, which will not be known until after the finalisation of our results for the year ending March 31, 2010. Furthermore, if a contribution is due to the AICF during our financial year ending March 31, 2012, which is not yet known, it will be reduced by an amount of up to 35% of the costs associated with the Proposal incurred in our financial year ending March 31, 2011.

3.2.4. Restrictions on Specified Dealing

The AFFA provides that we will refrain from undertaking certain transactions (known as Specified Dealings as defined in the AFFA) without obtaining the prior consent of the New South Wales Government. However, a broad range of transactions are exempt from this restriction. Capitalised terms used in this Section 3.2.4 and Other Matters in Section 3.2.5 have the same meaning given to them in the AFFA unless defined otherwise in this Explanatory Memorandum. A copy of the AFFA has been filed with the US Securities and Exchange Commission as an exhibit to the registration statement of which this Explanatory Memorandum forms a part. A copy of the AFFA is also available under the Investor Relations area of our website (www.jameshardie.com, select James Hardie

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Investor Relations) and copies may be obtained on request. See Where You Can Find Additional Information in Section 12.

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

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

materially adversely affect the priority as between the AICF and our shareholders to a surplus from a notional winding up of ourselves and James Hardie 117 Pty Limited; or

materially impair the legal or financial capacity of ourselves and James Hardie 117 Pty Limited as a whole,

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

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

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

3.2.5. Other Matters

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

Provided that James Hardie 117 Pty Limited meets its payment obligations under the AFFA and there is no Insolvency Event, Wind-Up Event or Reconstruction Event, neither we nor our subsidiaries will have any additional liability under the AFFA to contribute funding. We have satisfied ourselves that nothing in the Proposal involves the occurrence of an Insolvency Event, Wind-Up Event or Reconstruction Event. The New South Wales Government and the Asbestos Injuries Compensation Fund Limited also have confirmed this in the AFFA Deed of Confirmation.

3.2.6. Australian Taxation Office Rulings on Contributions under the AFFA

A number of rulings relating to the Australian tax treatment of contributions under the AFFA and other related matters previously were obtained from the Australian Taxation Office (the Rulings). As contemplated by the AFFA Deed of Confirmation, the relevant James Hardie companies and the AICF received new rulings from the Australian Taxation Office to replace the tax rulings previously issued by the Australian Taxation Office in connection with the AFFA and received confirmation that the Accepted Tax Conditions (as defined in the AFFA) remain unchanged in all material respects as a result of Stage 2 of the Proposal.

As outlined in Section 3.2.1, the New South Wales Government is to make a loan facility available to the AICF. New Rulings will be applied for to take into account these arrangements.

3.3. Matters Not Affected by the Proposal

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

As announced on March 22, 2006, RCI Pty Ltd, one of our wholly-owned subsidiaries, received an amended assessment from the Australian Taxation Office in respect of RCI Pty Ltd s income tax return for the year ended

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

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

At the end of May 2007, the Australian Taxation Office disallowed our objection to RCI Pty Ltd s notice of amended assessment for the year ended March 31, 1999. In July 2007, RCI Pty Ltd appealed to the Federal Court of Australia against the Australian Taxation Office s objection decision. This matter was heard before the Federal Court of Australia in September 2009 and judgment was reserved. We now await handing down of that judgment.

3.4. Consequences if the Proposal Does Not Proceed

Our intellectual property and treasury functions are now administered from companies that are tax resident in Ireland. If Stage 2 does not proceed, our parent company will remain registered and a tax resident in The Netherlands. If this occurs, we will have incurred substantially all of the currently estimated project costs of US$63 million consisting of advisory fees and expenses and other transaction costs, including US$41 million of Dutch tax as a result of a capital gain on the transfer of our intellectual property from The Netherlands without receiving the expected benefits from the Proposal. However, the costs associated with the move of our head office functions will not be incurred and we would not have to pay to maintain a head office in Ireland. As previously set forth, the fair market value of our intellectual property is currently under review by the Dutch Tax Authorities and, if determined to be greater than the amount determined by us, could result in additional Dutch tax whether or not the Proposal is implemented.

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

Further, notwithstanding the concession by the US IRS that we and our subsidiaries qualified for benefits during 2006 and 2007, the year-by-year assessment by the US IRS to challenge whether the requirements for benefits under the amended US/Netherlands Treaty are satisfied exposes us to the continuing risk that the US IRS determines we do not qualify for treaty benefits in subsequent years. This means that interest, royalty and dividend payments from our subsidiaries in the US to us and our subsidiaries in Ireland could be subject to 30% US withholding tax if the US IRS were successful in such challenge. In the event Stage 2 of the Proposal does not proceed, we might consider other actions to mitigate this risk.

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

3.5. Continuation of ASX and NYSE Listings

Following our transformation to Irish SE, James Hardie s securities will continue to be quoted on the ASX in the form of CUFS (with CHESS Depositary Nominees Pty Limited being the registered holder of the underlying shares and each CUFS representing one underlying share) and the NYSE in the form of ADSs (with The Bank of

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New York Mellon as the registered owner of CUFS and each ADS representing 5 CUFS/underlying shares). We intend to continue to maintain listings under the symbol JHX on both stock exchanges.

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

3.6. No Irish Stamp Duty on Share Market Transactions

A ruling has been obtained from the Irish Revenue authorities confirming that on-market transactions in CUFS and ADSs through the CHESS and the NYSE trading systems, respectively, will be treated as exempt from stamp duty in Ireland. However, off-market transactions in CUFS or underlying shares, as well as conversions into and out of CUFS or ADSs may be subject to Irish stamp duty at a rate of 1% of market value or consideration paid (whichever is greater). Please refer to Irish Stamp Duty on Future Transfers of Irish SE Shares in Section 8.4.2.5 for further details.

3.7. Impact on External Borrowings

We obtained confirmation from our current lending banks that the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities, and reached agreement with our current lending banks for the rearrangement of those facilities, which enabled JHIF Limited to become a borrower and assume the obligations of JHIF BV under the external finance facilities at the time our financing and treasury operations were transferred from JHIF BV to JHIF Limited. This is recorded in deeds of confirmation entered into with individual lenders. Please refer to Lender Deeds of Confirmation in Section 4.2.3 for further details.

3.8. Dividends

Following implementation of Stage 2 of the Proposal, all of Irish SE s shareholders will prima facie be subject to Irish dividend withholding tax (See Irish Tax Consequences of the Proposal Irish SE Shareholders Taxation in Section 8.4.2).

In order to have no Irish dividend withholding tax, shareholders who reside in an EU member country other than Ireland or in a country with which Ireland has a double tax treaty must complete and send to Irish SE a non-resident declaration form. If the appropriate declaration is not made, these shareholders will be liable for Irish dividend withholding tax of 20% on dividends paid by Irish SE and may not be entitled to offset this tax. In this case, it would be necessary for shareholders to apply for a refund of the withholding tax directly from the Irish Revenue authorities.

We therefore recommend that the appropriate declaration is made by all shareholders who do not reside in Ireland. The appropriate declaration forms are available from our website, www.jameshardie.com, select James Hardie Investor Relations.

3.9. Agreement on the Involvement of Employees

In connection with the implementation of Stage 1, we and certain of our subsidiaries were required to negotiate the terms of future employee involvement in James Hardie with SNBs representing employees from EEA member states in which James Hardie operates. On February 10, 2010, we and certain of our subsidiaries entered into an agreement with the SNBs on the involvement of employees pursuant to which we will provide information to and consult with our employees in EEA member states and other countries in which we operate. The agreement on the involvement of employees is filed as an exhibit to our registration statement of which this Explanatory Memorandum forms a part and

is incorporated herein by reference.

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The material provisions of the agreement are as follows:

annually, we will send out a communication to all employees located in EEA member states and employees other than EEA employees regarding material matters and topics that relate to James Hardie that have occurred during the current year, including material changes and/or developments related to James Hardie s structure, its economic and financial situation, the likely development of the business and of production and sales, material capital expenditure, fundamental organisational changes, the introduction of new working and manufacturing methods, mergers, relocations of production operations, retrenchments or closures of companies, establishments or important parts of such units, current status of and developments in the employment situation and unusual circumstances or adopted resolutions which significantly affect the employment status of the employees (including relocations, closures of companies or mass dismissals) (collectively, we refer to these as Material Matters);

annually, we will convene a meeting with non-EEA member state employees to discuss information related to Material Matters;

with respect to the non-EEA member state employees, we presently intend to conduct such annual meetings for at least three years from the date of the agreement and thereafter will seek the views of these employees about the continuation and parameters of such meetings;

with respect to EEA member state employees, we will provide additional information and meet and engage in a dialogue and exchange of views with those employees who express an interest in the annual communication in a manner and with a content that allows the employees to express an opinion on the Material Matters in such a way that their opinion may be taken into account in our decision-making process;

in addition to the annual communication, we will send out a communication to all employees located in EEA member states regarding Material Matters as they occur if not addressed in the annual communication and provide information to and engage in a dialogue and exchange of views with those employees who express an interest in such communication;

we are not required to provide information where we reasonably determine that it would breach our obligations or impair or adversely affect the functioning of us or our subsidiaries and establishments and we may impose confidentiality requirements on information provided to employees as we may reasonably determine; and

upon the written request to our board of one or more EEA member state employees or upon a resolution of the board, we shall establish a body representative of such employees in accordance with the procedures and requirements of the Standard Rules as included in Council Directive 201/86/EC, which are a set of rules that define employee participation under the SE Regulation (we refer to these as the Standard Rules).

The agreement on involvement of employees provides that employees participating in the negotiation of the agreement and in the processes contemplated thereby are indemnified by the company in respect of such participation. The agreement may be renegotiated either upon a resolution of the board or, if an employee representative body is established, at the time of its establishment or after the fourth anniversary of its establishment, or by an SNB if requested to be formed by either 10% of the employees representing at least two member states or a resolution from our board. If, in the event of any such renegotiation an agreement is not reached within the negotiating period set forth in the Council Directive, the Standard Rules provided by the Council Directive will therefore apply.

As contemplated by the agreement, we provided notice to our European employees regarding the proposed migration of our corporate seat from The Netherlands to Ireland. We will provide communication and information to employees

located in EEA member states regarding the migration of our corporate seat and will meet with those employees who have expressed an interest in receiving such communication to discuss any questions and issues they may have with the proposed migration.

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4. CHANGE OF OUR CORPORATE DOMICILE TO IRELAND

4.1. Introduction

This section sets out the following:

details of the change in corporate domicile to Ireland as part of the Stage 2 transformation process;

a summary of the key differences as a result of moving to Ireland and becoming Irish SE (including corporate governance arrangements and applicable company law and takeover rules); and

other relevant factors for consideration by shareholders as described further below.

4.2. Implications of Moving to Ireland

4.2.1. Tax Residence in Ireland

Irish SE will need to be tax resident in Ireland in order to qualify for benefits under the US/Ireland Treaty. We have, in connection with the Proposal, requested and received revenue rulings from Irish and Dutch Revenue authorities. The rulings confirm that so long as Irish SE is centrally managed and controlled in Ireland, Irish SE will be a tax resident of Ireland and not be a tax resident of The Netherlands for the purposes of The Netherlands/Ireland Treaty and so will not be taxed on its income in The Netherlands (except for any Dutch source income) nor be required to withhold Dutch dividend withholding tax and will be a tax resident of Ireland once Stage 2 of the Proposal is implemented.

The issue as to whether a company is centrally managed and controlled in Ireland is a question of fact and this concept is directed at the highest level of control of a company s business, as distinct from day-to-day control to carry out normal business operations. It is intended that Irish SE will satisfy the requirement to be centrally managed and controlled in Ireland by, among other things, holding a majority of its board meetings in any one year in Ireland at which a majority of the directors would be physically present in Ireland with the board making major strategic business decisions relating to James Hardie as a whole, such as decisions relating to significant investments, capital expenditures, equity and debt raising and dividend payments in Ireland and most business decisions relating to Irish SE as a distinct entity and having a head office function located in Ireland.

4.2.2. Head Office

Our head office will move to Ireland if Stage 2 of the Proposal is approved and implemented. The head office will employ the requisite personnel to run Irish SE s head office and corporate office.

4.2.3. Lender Deeds of Confirmation

In connection with Stage 1, we entered into a deed of confirmation with each of our current lending banks confirming that implementation of the Proposal does not require any consent or approval, or result in any rights of termination, under our existing external finance facilities. JHIF Limited, our Irish finance subsidiary, has become a borrower and assumed the obligations of JHIF BV under these facilities as a result of the transfer of our financing and treasury operations from JHIF BV to JHIF Limited. Our existing lenders also have confirmed that they do not object to the contemplated changes to the AFFA and related documents.

4.2.4. Taxation Impact on Irish SE

As Irish SE s head office, corporate office and treasury, finance and intellectual property functions will be located in Ireland, the income from those activities will be subject to tax in Ireland. The current company tax rate for trading companies, such as JHT and JHIF Limited, is 12.5%. We obtained rulings from the Irish Revenue authorities confirming that JHT and JHIF Limited will be eligible for the company tax rate for trading companies for the treasury, finance and intellectual property functions carried out in Ireland.

We also obtained a ruling confirming that, assuming Irish SE is centrally managed and controlled in Ireland, Irish SE will become Irish tax resident after the implementation of Stage 2. As a result, so long as Irish SE is listed

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on one or more recognised stock exchanges (which include both the ASX and the NYSE) and continues to meet the trading tests under the US/Ireland Treaty, Irish SE will qualify for treaty benefits under the US/Ireland Treaty after Stage 2 is implemented. Under current law, interest and royalties paid from Irish SE s subsidiaries in the US to Irish SE or its subsidiaries that are tax resident in Ireland are free of US withholding tax and dividends paid from those US subsidiaries to James Hardie entities in Ireland are subject to 5% US dividend withholding tax, which will be creditable in Ireland.

In addition, the Dutch Revenue authorities have confirmed that no Dutch corporate income tax will be imposed (except on Dutch-source income) and no Dutch dividend withholding tax will be imposed as long as Irish SE continues to be tax resident in Ireland under The Netherlands/Ireland Treaty.

4.2.5. Impact on the Agreement on the Involvement of Employees

Our agreement on the involvement of employees described in Agreement on the Involvement of Employees in Section 3.9 is governed by the laws of the EU member state in which our statutory seat is located. Therefore, our obligations under that agreement to provide information to and consult with employees will be determined by the Standard Rules concerning such topics as prescribed by the law implementing the SE Regulation in Ireland.

4.3. Corporate Governance

Our corporate governance framework will change if Stage 2 of the Proposal is approved and implemented to reflect the change in our corporate domicile from The Netherlands to Ireland. This is discussed in more detail below.

4.3.1. Corporate Governance Framework Following Transformation to Irish SE

We currently operate under the regulatory requirements on corporate governance of numerous jurisdictions and organisations, including the ASX, Australian Securities & Investments Commission, NYSE, the US Securities and Exchange Commission, the European Commission and various other rule-making bodies. The Investor Relations area of our website (www.jameshardie.com, select James Hardie Investor Relations) contains information about the ways in which we currently comply with the ASX Corporate Governance Council Principles and Recommendations, NYSE corporate governance standards for listed companies that are foreign private issuers and the Dutch Corporate Governance Code.

Upon transformation to Irish SE, the Dutch Corporate Governance Code will no longer apply. We will become subject to the regulatory requirements of the Irish Takeover Panel, which will generally only be relevant where a third party has made a takeover offer for Irish SE or an approach which may lead to a takeover offer. The Combined Code on Corporate Governance as published by the Financial Reporting Council in the UK will not apply to Irish SE unless its shares become quoted on the Irish Stock Exchange or the London Stock Exchange.

Irish SE will continue to comply with the ASX Corporate Governance Council Principles and Recommendations as its general policy and continue to explain any departures from those Principles and Recommendations in its annual report. Irish SE also will continue to follow the NYSE corporate governance standards for listed companies that are foreign private issuers (which will include Irish SE). We also will be subject to Irish law in addition to the SE Regulation.

4.3.2. Board Structure

If Stage 2 of the Proposal is approved by shareholders and implemented, our Supervisory and Managing Boards will be replaced by a single unitary board of non-executive and executive directors, which, over time, is expected to

consist of eight non-executive directors and one executive director. All of your seven directors currently serving on the Supervisory Board will continue as non-executive directors of Irish SE, with one new director expected to be added to the board of Irish SE over time. The two Managing Board directors who will not continue as directors of Irish SE will resign from the board on implementation of the Proposal. The Managing Board and Supervisory Board will cease to exist and the company will be governed by the single board of directors of Irish SE.

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4.3.3. Board and Shareholder Meetings

Irish SE s board is expected to make most of the key strategic decisions at meetings convened in Ireland. There may be occasions where board meetings would be held outside Ireland or by telephone, but the majority of meetings in any one year are expected to be held in Ireland.

The annual general meeting of shareholders of Irish SE will no longer be held in The Netherlands. It is expected that Australian and US resident shareholders will be able to participate in the annual general meeting and ask questions through a webcast of proceedings on Irish SE s website and at a location in Australia after Stage 2 of the Proposal is undertaken. While Irish SE will no longer hold annual information meetings, Irish SE intends to conduct shareholder briefings in Australia.

4.3.4. Board Composition and Structure; Board Committees

Louis Gries, Michael Hammes, Brian Anderson, Donald McGauchie, David Harrison, James Osborne, Rudy van der Meer and David Dilger will be directors of Irish SE on implementation of Stage 2 of the Proposal. Michael Hammes will continue as Chairman, Donald McGauchie will continue as Deputy Chairman and Brian Anderson, David Harrison and Donald McGauchie will continue as chairmen of the audit, remuneration, and nominating and governance committees, respectively.

It is expected that another non-executive director will be appointed to the Irish SE board in due course.

The articles of association of Irish SE provide flexibility in relation to the 2010, 2011 and 2012 annual general meetings for the directors to determine among themselves who will retire or stand for re-election, or where the directors fail to make such determination, for the Chairman to so determine at each of such meetings. The directors have not yet made a determination as to which directors will stand for re-election at each of these annual meetings although David Dilger will stand for election at the 2010 annual general meeting. From the 2013 annual general meeting and thereafter, the identity of the directors to retire and offer themselves for re-election at each annual general meeting will be those directors, except for a director who holds the office of chief executive officer, who have been longest in office since their last appointment. A director who is the chief executive officer of Irish SE shall only have to retire and (if he or she so chooses) present himself or herself for re-election as a director once every six years following their initial appointment. See Summary of Key Corporate Law Differences Between JHI SE and Irish SE in Section 4.4 under the subheading Term of Directors Appointment.

Our audit, remuneration and nominating and governance committees will become committees of Irish SE s single tier board if Stage 2 of the Proposal is approved and implemented. There will not be any material changes to the charters of these committees.

4.3.5. Independence of Chairman and Non-Executive Directors

The chairman of the board and of each of the committees, as well as a majority of directors of Irish SE and its board committees, will be independent unless a greater number is required to be independent under the ASX Corporate Governance Council Principles and Recommendations, the rules and regulations of the ASX, the NYSE or any other regulatory body.

4.3.6. Delegation of Powers

Irish SE s board will be responsible for the management and operation of Irish SE, and will have the power to delegate any of their powers to the chief executive officer, any director, any person or persons employed by Irish SE or any of

its subsidiaries or to any committee established by the board. In each case, the delegatee will have the power to sub-delegate to another person, a committee or a sub-committee, as the case may be. The board will be free to exercise all of the powers of Irish SE in furtherance of Irish SE s objects, except for any powers that are expressly reserved for shareholders by the constituent documents or Irish company law.

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Irish SE s board also will have the power to execute powers of attorney in order to appoint attorneys to act on Irish SE s behalf from time to time.

In addition, Irish SE s board also may establish (and appoint members to) any committees, local boards or agencies for managing any of the affairs of Irish SE, either in Ireland or elsewhere.

4.3.7. Indemnification

Irish SE s articles of association will provide for indemnification of any person who is or was a director, company secretary, employee or such other person who may be deemed by Irish SE s board to be an agent of Irish SE, who suffers any cost, loss, or expense as a result of any action in connection with the entry into any contract or discharge of their duties to Irish SE, provided he or she acted in good faith in carrying out their duties and in a manner they reasonably believed to be in Irish SE s interest. This indemnification will generally not be available if the person seeking indemnification acted in a manner that could be characterised as negligent, default, breach of duty or breach of trust in performing such person s duties to Irish SE. In addition, under Irish company law, this indemnity only binds Irish SE to indemnify a current or former director or company secretary where judgment is given in any civil or criminal action in favour of such director or company secretary, or where a court grants relief because the director or company secretary acted honestly and reasonably and ought fairly to be excused. The articles of association of Irish SE apply the same limitations to other indemnitees referred to above who are not current or former directors or the company secretary of Irish SE.

We currently provide Indemnity Deeds governed by Dutch law to our directors and senior employees and James Hardie Building Products Inc. provides Indemnity Agreements to the company s and James Hardie Building Products Inc. s directors, officers and employees, each of which will continue in effect following implementation of Stage 2 with the terms described in Indemnification in Section 4.3.7. In addition to these existing indemnities, upon implementation of Stage 2, Irish SE will provide an indemnity generally consistent with the existing Indemnity Deeds, but which will be governed by Irish law, to its directors, the company secretary and to certain senior employees. These Irish law-governed Indemnity Deeds will require Irish SE, to the maximum extent permitted by Irish law, to unconditionally and irrevocably indemnify a person in relation to the person serving or having so served as a director, company secretary or senior employee of Irish SE or one of its subsidiaries or another entity at Irish SE s request, or the request of one of Irish SE s subsidiaries. In addition, the Irish law-governed Indemnity Deeds will provide for advances to allow indemnitees to fund their defense costs. However, the indemnified party will be required to repay the amounts paid to them if it is ultimately determined that he or she is not entitled to indemnification for such amounts, if any such amounts exceed what Irish SE is permitted to pay under the Irish law-governed Indemnity Deeds or if he or she receives payment under an insurance contract in respect of those liabilities. To the extent that an indemnitee also receives payment under an indemnity from one of our subsidiaries, such indemnitee is not entitled to claim under the Irish law-governed Indemnity Deeds.

Irish law renders void any provision in an Irish company s articles of association or other contract that would exempt from liability or provide any director or the company secretary with an indemnity for negligence, default, breach of duty or breach of trust. This limitation is broader than is currently permitted under our Indemnity Deeds.

Irish SE also intends to maintain directors and officers liability insurance.

4.3.8. Share Plans

Following implementation of Stage 2, we intend for our 2001 Equity Incentive Plan, 2005 Managing Board Transitional Stock Option Plan, Long Term Incentive Plan 2006, and Supervisory Board Plan to cease to be governed by Dutch law and to become governed by Irish law. The plans also will be amended to reflect the fact that Irish SE

will have a single board of directors, including changing the names of the plans as appropriate to reflect the single board of directors.

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4.3.9. Certain shareholder approvals

In connection with the approval of Stage 2, shareholders are being asked to approve the articles of association of Irish SE. By approving the articles of association shareholders also will approve:

the ability of the board of Irish SE to issue new shares until the fifth anniversary of the adoption of the articles of association of Irish SE at the extraordinary general meeting; and

the maximum aggregate remuneration of the non-executive directors.

In addition, the terms of the LTIP as well as the share grants under the LTIP and Supervisory Board Share Plan, as approved by the shareholders at previous annual general meetings, will continue to apply to the board of Irish SE after completion of Stage 2.

4.4. Shareholder Input and Comments Regarding Irish SE Articles of Association

In connection with the Stage 1 extraordinary general meeting, we received comments on the proposed articles of association for Irish SE. Based on that feedback, we committed to solicit comments on the proposed articles of association for Irish SE prior to presenting them to shareholders for approval in connection with Stage 2.

Since then, we have reviewed the comments we received in connection with Stage 1 and have met with and received comments from a number of investor advisory groups. The Due Diligence Committee and Supervisory Board reviewed these comments. In reviewing these comments, the Due Diligence Committee and Supervisory Board also considered advice from external counsel that some of the comments, including relating to modifying the Irish law change of control provisions would not be valid under Irish law or permitted under the ASX Listing Rules. Following their review, your directors made a number of changes to the proposed articles of association for Irish SE.

The most significant changes to the proposed articles of association for Irish SE from the articles previously proposed in connection with Stage 1 of the Proposal are:

Removing the ability of directors of Irish SE to remove a fellow director; this power is now reserved for shareholders;

Simplifying the specified time periods and information for shareholders to request the board to put items of business on the agenda of general meetings or nominate directors;

Increasing the minimum notice period for all extraordinary general meetings from 14 to 21 days; and

Setting the threshold for shareholders to request the board to put items of business on the agenda of general meetings and nominate directors at 10% of Irish SE s issued share capital.

A number of additional comments related to matters that the Supervisory Board and Due Diligence Committee considered were not necessary to be incorporated in the articles of association for Irish SE. The most significant of these comments not incorporated into the articles of association related to:

Requiring the company to produce a remuneration report and put it forward for shareholder approval. The company is subject to Irish, Australian and US laws and regulations. It has produced and sought non-binding shareholder approval for a remuneration report for some years when not required under Dutch law, and intends to continue to do so.

Requiring annual general meetings to be held in Australia. Annual general meetings will be held in Ireland and shareholders will be able to participate via a videoconference. The board periodically will review whether shareholders have appropriate opportunities to participate in the annual general meeting and receive updates about James Hardie s performance.

Requiring the company to hold an Australian annual information meeting. This meeting has been poorly attended with declining attendance in recent years. The company will replace this by giving shareholders the ability to participate directly in the annual general meeting and intends to hold periodic briefings for shareholders in Australia.

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4.5. Summary of Key Corporate Law Differences Between JHI SE and Irish SE

As part of the implementation of Stage 2 and the change of corporate domicile to Ireland, our existing constituent documents will no longer apply and will instead be replaced with a memorandum and articles of association consistent with the company law regime applicable in Ireland as supplemented by the provisions of the SE Regulation.

The key differences between JHI SE and Irish SE arise as a result of the fact that we currently are subject to Dutch company law whereas Irish SE will be subject to Irish company law.

The table below, together with Section 4.7, summarises the material differences between JHI SE and Irish SE and the rights of shareholders in the event Stage 2 of the Proposal is approved and implemented. The summary is not an exhaustive list of all the differences or a complete description of the differences described and reference is made to the articles of association of JHI SE and Irish SE which were previously filed as an exhibit with the SEC to our registration statement relating to Stage 1 and to the revised articles of association of Irish SE filed as an exhibit to our registration statement of which this Explanatory Memorandum forms a part and are incorporated herein by reference. The information in the table below under Irish SE/Irish Law reflects the changes made to the articles of association of Irish SE after our review of the input and comments we received following the publication of the articles of association of Irish SE in connection with Stage 1 of the Proposal. The articles of association are also available under the Investor Relations area of our website (www.jameshardie.com, select James Hardie Investor Relations) and copies may be obtained on request. See Where You Can Find Additional Information in Section 12.

It should be noted that the authorised share capital of Irish SE will be identical to that of JHI SE (1,180,000,000 divided into 2,000,000,000 shares of 0.59 each).

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Issue	JHI SE/Dutch Law	Irish SE/Irish Law
Rights Attaching to Shares		
Issue of Additional Shares and Pre-emptive Rights	The Supervisory Board has the power (a) to issue shares and (b) to limit or exclude pre-emptive rights in respect of such issue for a period of up to five years, subject to renewal, if it has been granted such power by an ordinary resolution of shareholders (which requires the approval of a majority of a quorum of shareholders). The shareholders of JHI NV have provided these authorisations, which will expire on August 18, 2010. If the Supervisory Board has not been designated as the authorised body for share issues and limitations of pre-emptive rights, the shareholders have the power to take such actions, but only upon the proposal of the Supervisory Board. In the absence of any action by shareholders or the Supervisory Board, share issues are subject to pre-emptive rights in favour of the then current shareholders, except for shares issued (a) for consideration other than for cash or (b) to employees of James Hardie.	The board has the power (a) to issue shares up to a maximum of Irish SE s authorised share capital and (b) to limit or exclude statutory pre-emptive rights in respect of such issue for cash consideration, for a period of up to five years in each case, subject to renewal, by a special resolution of shareholders (which requires the approval of holders of 75% of shares present in person or by proxy and voting at the relevant general meeting) in the case of disapplication of statutory pre-emptive rights, and an ordinary resolution (which requires the approval of holders of a majority of shares present in person or by proxy and voting at the relevant general meeting) in the case of authorising the board to issue shares. Irish SE s articles of association, which shareholders will be asked to approve at the extraordinary general meeting held to consider and take action on Stage 2, will grant these authorisations to the board, which will expire (unless renewed) on June 2, 2015. If the board is at any time not designated as the authorised body for such powers, the shareholders acting by ordinary resolution have the power to issue shares, but only upon the proposal of the board.

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Issue	JHI SE/Dutch Law	Irish SE/Irish Law
Buy-Back of Shares and Share Redemptions	The Managing Board, subject to the approval of the Supervisory Board, has the power to buy-back JHI SE s shares for a period of up to 18 months, subject to renewal, if it has been granted such power by an ordinary resolution of shareholders. The resolution must specify the number of shares (up to 10% under the articles of association of the aggregate par value of the issued share capital) that may be acquired, the manner in which they may be acquired and the range of prices that may be paid by JHI SE. The shareholders of JHI SE have provided such authorisation, which will expire on February 17, 2011. Any shares to be bought back must be fully paid and a buy-back of shares may only be funded out of freely distributable profits or out of the proceeds of a fresh issue of shares for that purpose. Dutch company law does not recognise redeemable shares. Under Dutch company law, shares that have been bought back by JHI SE are not automatically cancelled and must be held in treasury unless cancellation of such shares is approved by an ordinary resolution of the shareholders and a creditor process is followed.	Irish law permits a company to redeem its shares (provided such shares are redeemable) at any time whether on or off market without shareholder approval. Accordingly, the articles of association of Irish SE provide that, where Irish SE agrees to acquire any shares (unless Irish SE elects to treat the acquisition as a purchase), it shall be a term of such contract that the relevant shares become redeemable on the entry into of that contract and that completion of that contract shall constitute redemption of the relevant shares. This means that Irish SE may acquire its own shares. In addition, Irish company law permits an Irish company and its subsidiaries to make market purchases of the shares of the Irish company on a recognised stock exchange if shareholders of the company have granted the company and/or its subsidiaries a general authority by ordinary resolution to do so. Currently, in addition to the Irish Stock Exchange, the New York Stock Exchange, NASDAQ and the London Stock Exchange are also recognized stock exchanges for this purpose. As the ASX is not currently a recognized stock exchange for the purposes of Irish law, on- and off-market purchases of shares in Irish SE (by way of trading CUFS) will only be available to Irish SE through their redemption in accordance with the redemption mechanism in its articles, outlined above, provided Irish SE does not treat such acquisition as a purchase.

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Issue	JHI SE/Dutch Law	Irish SE/Irish Law
		A designation of such general authority can be valid for a period of no more than 18 months, subject to renewal, and must specify the number of shares that may be acquired and a price range or formula to calculate the acceptable range of prices that may be paid. In the case of off-market purchases by subsidiaries of Irish SE, the proposed purchase contract must be authorised by a special resolution of the shareholders of Irish SE. A redemption or repurchase of shares may only be funded out of freely distributable reserves or out of the proceeds of a fresh issue of shares for that purpose. Under Irish company law, the board may determine whether shares that have been repurchased or redeemed by Irish SE will either be held in treasury or cancelled. However, under Irish company law, the nominal value of treasury shares held by Irish SE may not, at any one time, exceed 10% of the nominal value of the issued share capital of Irish SE.
Dividends and Distributions	Subject to the approval of the Supervisory Board, the Managing Board, or the shareholders if so designated by the Managing Board, has the power to declare dividends and other distributions, including distributions out of a share premium reserve or out of any other reserve shown in the annual accounts as not being a statutory reserve. Notwithstanding the foregoing, (a) dividends may only be declared in	Dividends and distributions of assets to shareholders may be declared (a) in the case of dividends, by the board or (b) upon the recommendation of the board, by an ordinary resolution of shareholders, provided that with respect to dividends or distributions declared pursuant to subsection (b) above, the dividends or distributions may not exceed the amount recommended by the board. Dividends and distributions may

	so far as JHI SE s shareholders equity exceeds the amount of the paid up and called portion of the share capital, plus the statutory reserves and (b) provided distributions made in shares requires a resolution to that effect of the corporate body authorised to decide on the issue of additional shares.	only be made in so far as (a) Irish SE has sufficient freely distributable reserves and (b) Irish SE s net assets are in excess of the aggregate of called up share capital plus undistributable reserves and the distribution does not reduce its net assets below such aggregate.

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Issue	JHI SE/Dutch Law	Irish SE/Irish Law
Directors Board Structure	JHI SE has a two-tiered board structure, consisting of a Managing Board and a Supervisory Board.	Irish SE will have a single-tier board.
Powers of Board	Where a matter is not specifically reserved for the Managing Board or the Supervisory Board, such matter falls within the remit of the shareholders. All such matters require an ordinary resolution of shareholders except for the following, which require a special resolution of the shareholders: amending the articles of association; mergers; and demergers. The Managing Board requires approval of each of the Supervisory Board and the shareholders for resolutions regarding a significant change in the identity or nature of JHI SE, including: the transfer of the enterprise or practically the entire enterprise to a third party; to conclude or cancel a long-lasting co-operation with any other person or as a fully liable general partner of a limited partnership or a general partnership, provided that such co-operation or the cancellation thereof is of essential importance to JHI SE; and to acquire or dispose of a participating interest in the capital of a company with a value of a	Under Irish company law and the articles of association, certain matters are reserved for shareholder determination pursuant to a special resolution. Such matters include: reduction of share capital; approval of a change of name; deciding to vary class rights attaching to shares; amending the memorandum or articles of association; disapplication of statutory pre-emptive rights; and approval of schemes of arrangements. Under Irish company law and the articles of association, certain matters are reserved for shareholder determination pursuant to an ordinary resolution. Such matters include: increasing the authorised share capital; renewing board authority to allot shares; and removal of directors Where a matter is not specifically reserved for shareholder determination by Irish company law, the SE Regulation or the proposed articles of association of

	least one-third of the sum of the assets according to the consolidated balance sheet. The shareholders and the Supervisory Board each may subject Managing Board decisions to their approval by means of a resolution to that effect.	Irish SE, such matter falls within the remit of the board.

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Issue	JHI SE/Dutch Law	Irish SE/Irish Law
Duties of Directors	The Managing Board and Supervisory Board are under a duty to act in the best interests of JHI SE, which involves taking into account the i	