

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

**FORM 10-Q**

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

For the Quarterly Period Ended September 30, 2010

or

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

For the transition period from            to

Commission File Number 001-03970

**HARSCO**

**HARSCO CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**23-1483991**

(I.R.S. employer identification number)

**350 Poplar Church Road, Camp Hill, Pennsylvania**

(Address of principal executive offices)

**17011**

(Zip Code)

Registrant's telephone number, including area code **717-763-7064**

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

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

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

Large accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Class	Outstanding at October 31, 2010
Common stock, par value \$1.25 per share	80,506,644

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**PART I – FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

**HARSCO CORPORATION**

**CONDENSED CONSOLIDATED STATEMENTS OF INCOME (Unaudited)**

(In thousands, except per share amounts)	Three Months Ended September 30		Nine Months Ended September 30	
	2010	2009	2010	2009
<b>Revenues from continuing operations:</b>				
Service revenues	\$ 627,901	\$ 612,432	\$ 1,865,333	\$ 1,791,081
Product revenues	124,500	131,789	415,994	427,005
<b>Total revenues</b>	<b>752,401</b>	<b>744,221</b>	<b>2,281,327</b>	<b>2,218,086</b>
<b>Costs and expenses from continuing operations:</b>				
Cost of services sold	493,181	472,943	1,481,099	1,385,054
Cost of products sold	81,569	81,652	263,597	279,061
Selling, general and administrative expenses	131,405	125,443	401,496	381,354
Research and development expenses	1,293	861	2,979	2,236
Other (income) expense	883	6,898	(2,020)	6,427
<b>Total costs and expenses</b>	<b>708,331</b>	<b>687,797</b>	<b>2,147,151</b>	<b>2,054,132</b>
<b>Operating income from continuing operations</b>	<b>44,070</b>	<b>56,424</b>	<b>134,176</b>	<b>163,954</b>
Interest income	737	888	1,849	1,944
Interest expense	(15,709)	(15,822)	(47,239)	(46,621)
<b>Income from continuing operations before income taxes and equity income</b>	<b>29,098</b>	<b>41,490</b>	<b>88,786</b>	<b>119,277</b>
Income tax expense	(7,391)	(6,525)	(23,295)	(20,508)
Equity in income of unconsolidated entities, net	120	128	309	280
<b>Income from continuing operations</b>	<b>21,827</b>	<b>35,093</b>	<b>65,800</b>	<b>99,049</b>

<b>Discontinued operations:</b>				
Loss from discontinued business	(1,406)	(17,183)	(6,195)	(21,094)
Income tax benefit	511	5,391	2,716	6,609
<b>Loss from discontinued operations</b>	<b>(895)</b>	<b>(11,792)</b>	<b>(3,479)</b>	<b>(14,485)</b>
<b>Net Income</b>	<b>20,932</b>	<b>23,301</b>	<b>62,321</b>	<b>84,564</b>
Less: Net income attributable to noncontrolling interests	(753)	(3,119)	(4,445)	(5,182)
<b>Net Income attributable to Harsco Corporation</b>	<b>\$ 20,179</b>	<b>\$ 20,182</b>	<b>\$ 57,876</b>	<b>\$ 79,382</b>

<b>Amounts attributable to Harsco Corporation common stockholders:</b>				
Income from continuing operations, net of tax	\$ 21,074	\$ 31,974	\$ 61,355	\$ 93,867
Loss from discontinued operations, net of tax	(895)	(11,792)	(3,479)	(14,485)
<b>Net income attributable to Harsco Corporation common stockholders</b>	<b>\$ 20,179</b>	<b>\$ 20,182</b>	<b>\$ 57,876</b>	<b>\$ 79,382</b>

Weighted average shares of common stock outstanding	80,574	80,315	80,559	80,285
Basic earnings per common share attributable to Harsco Corporation common stockholders:				
Continuing operations	\$ 0.26	\$ 0.40	\$ 0.76	\$ 1.17
Discontinued operations	(0.01)	(0.15)	(0.04)	(0.18)
<b>Basic earnings per share attributable to Harsco Corporation common stockholders</b>	<b>\$ 0.25</b>	<b>\$ 0.25</b>	<b>\$ 0.72</b>	<b>\$ 0.99</b>

Diluted weighted average shares of common stock outstanding	80,762	80,631	80,747	80,557
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Diluted earnings per common share attributable to Harsco Corporation common stockholders:				
Continuing operations	\$ 0.26	\$ 0.40	\$ 0.76	\$ 1.17
Discontinued operations	(0.01)	(0.15)	(0.04)	(0.18)

<b>Diluted earnings per share attributable to Harsco Corporation common stockholders</b>	<b>\$ 0.25</b>	<b>\$ 0.25</b>	<b>\$ 0.72</b>	<b>\$ 0.99</b>
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<b>Cash dividends declared per common share</b>	<b>\$ 0.205</b>	<b>\$ 0.200</b>	<b>\$ 0.615</b>	<b>\$ 0.600</b>
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See accompanying notes to unaudited condensed consolidated financial statements.

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**HARSCO CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS (Unaudited)**

(In thousands)	September 30 2010	December 31 2009
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 330,337	\$ 94,184
Trade accounts receivable, net	657,880	598,318
Other receivables	28,848	30,865
Inventories	278,922	291,174
Other current assets	163,818	154,797
<b>Total current assets</b>	<b>1,459,805</b>	<b>1,169,338</b>
Property, plant and equipment, net	1,428,705	1,510,801
Goodwill	698,261	699,041
Intangible assets, net	129,157	150,746
Other assets	128,819	109,314
<b>Total assets</b>	<b>\$ 3,844,747</b>	<b>\$ 3,639,240</b>
<b>LIABILITIES</b>		
<b>Current liabilities:</b>		
Short-term borrowings	\$ 4,960	\$ 57,380
Current maturities of long-term debt	319,803	25,813
Accounts payable	237,275	215,504
Accrued compensation	84,047	67,652
Income taxes payable	26,655	5,931
Dividends payable	16,503	16,473
Insurance liabilities	24,764	25,533
Advances on contracts	101,625	149,413
Other current liabilities	209,414	187,403
<b>Total current liabilities</b>	<b>1,025,046</b>	<b>751,102</b>
Long-term debt	850,586	901,734
Deferred income taxes	76,593	90,993
Insurance liabilities	64,417	61,660
Retirement plan liabilities	231,553	250,075
Other liabilities	58,755	73,842
<b>Total liabilities</b>	<b>2,306,950</b>	<b>2,129,406</b>
<b>COMMITMENTS AND CONTINGENCIES</b>		

**EQUITY**

<b>Harsco Corporation stockholders' equity:</b>		
Common stock	139,497	139,234
Additional paid-in capital	140,737	137,746
Accumulated other comprehensive loss	(182,571)	(201,684)
Retained earnings	2,141,560	2,133,297
Treasury stock	(737,106)	(735,016)
<b>Total Harsco Corporation stockholders' equity</b>	<b>1,502,117</b>	<b>1,473,577</b>
Noncontrolling interests	35,680	36,257
<b>Total equity</b>	<b>1,537,797</b>	<b>1,509,834</b>
<b>Total liabilities and equity</b>	<b>\$ 3,844,747</b>	<b>\$ 3,639,240</b>

See accompanying notes to unaudited condensed consolidated financial statements.

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**HARSCO CORPORATION  
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (Unaudited)**

(In thousands)	Nine Months Ended September 30	
	2010	2009
<b>Cash flows from operating activities:</b>		
Net income	\$ 62,321	\$ 84,564
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	209,428	208,014
Amortization	27,033	20,627
Equity in income of unconsolidated entities, net	(309)	(280)
Dividends or distributions from unconsolidated entities	176	200
Other, net	(17,271)	2,688
Changes in assets and liabilities, net of acquisitions and dispositions of businesses:		
Accounts receivable	(57,299)	55,251
Inventories	8,606	23,230
Accounts payable	14,524	(55,162)
Accrued interest payable	21,252	20,935
Accrued compensation	16,429	(19,439)
Other assets and liabilities	(48,910)	(63,934)
<b>Net cash provided by operating activities</b>	<b>235,980</b>	<b>276,694</b>
<b>Cash flows from investing activities:</b>		
Purchases of property, plant and equipment	(129,942)	(123,072)
Purchases of businesses, net of cash acquired	(27,643)	(12,732)
Proceeds from sales of assets	18,421	11,521
Other investing activities	(3,093)	(3,016)
<b>Net cash used by investing activities</b>	<b>(142,257)</b>	<b>(127,299)</b>
<b>Cash flows from financing activities:</b>		
Short-term borrowings, net	(50,919)	(84,303)
Current maturities and long-term debt:		
Additions	499,267	292,996
Reductions	(251,646)	(296,854)
Cash dividends paid on common stock	(49,460)	(47,750)
Dividends paid to noncontrolling interests	(5,020)	(2,466)
Purchase of noncontrolling interest	(1,159)	(12,953)
Contributions of equity from noncontrolling interests	442	5,332
Common stock issued-options	820	444
Other financing activities	(369)	—
<b>Net cash provided (used) by financing activities</b>	<b>141,956</b>	<b>(145,554)</b>
Effect of exchange rate changes on cash	474	2,530
Net increase in cash and cash equivalents	236,153	6,371
Cash and cash equivalents at beginning of period	94,184	91,336
<b>Cash and cash equivalents at end of period</b>	<b>\$ 330,337</b>	<b>\$ 97,707</b>

See accompanying notes to unaudited condensed consolidated financial statements.

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**HARSCO CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF EQUITY (Unaudited)**

(In thousands, except share and per share amounts)	Harsco Corporation Stockholders' Equity						Total
	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	
	Issued	Treasury					
<b>Beginning Balances, January 1, 2009</b>	<u>\$ 138,925</u>	<u>\$ (733,203)</u>	<u>\$ 137,083</u>	<u>\$ 2,079,170</u>	<u>\$ (208,299)</u>	<u>\$ 36,296</u>	<u>\$ 1,449,972</u>
Net income				79,382		5,182	84,564
Cash dividends declared:							
Common @ \$0.600 per share				(48,178)			(48,178)
Noncontrolling interests						(2,466)	(2,466)
Translation adjustments, net of deferred income taxes of (\$15,654)					94,278	297	94,575
Cash flow hedging instrument adjustments, net of deferred income taxes of \$10,121					(27,486)		(27,486)
Purchase of subsidiary shares from noncontrolling interest			(3,905)			(9,141)	(13,046)
Contributions of equity from noncontrolling interest						5,332	5,332
Pension liability adjustments, net of deferred income taxes of \$4,775					(10,569)		(10,569)
Marketable securities unrealized gains, net of deferred income taxes of (\$5)					9		9
Stock options exercised, 54,000 shares	67	(423)	863				507
Net issuance of stock – vesting of restricted stock units, 101,918 shares	194	(1,390)	(616)				(1,812)
Amortization of unearned compensation on restricted stock units, net of forfeitures			2,735				2,735
<b>Balances, September 30, 2009</b>	<u>\$ 139,186</u>	<u>\$ (735,016)</u>	<u>\$ 136,160</u>	<u>\$ 2,110,374</u>	<u>\$ (152,067)</u>	<u>\$ 35,500</u>	<u>\$ 1,534,137</u>

(In thousands, except share and per share amounts)	Harsco Corporation Stockholders' Equity						Total
	Common Stock		Additional Paid-in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Noncontrolling Interests	
	Issued	Treasury					
<b>Beginning Balances, January 1, 2010</b>	<u>\$ 139,234</u>	<u>\$ (735,016)</u>	<u>\$ 137,746</u>	<u>\$ 2,133,297</u>	<u>\$ (201,684)</u>	<u>\$ 36,257</u>	<u>\$ 1,509,834</u>
Net income				57,876		4,445	62,321
Cash dividends declared:							
Common @ \$0.615 per share				(49,613)			(49,613)
Noncontrolling interests						(5,020)	(5,020)
Translation adjustments, net of deferred income taxes of \$5,214					(8,205)	(288)	(8,493)
Cash flow hedging instrument adjustments, net of deferred income taxes of \$(3,590)					10,576		10,576
Contributions of equity from noncontrolling interests						442	442
Purchase of subsidiary shares from noncontrolling interest			(1,003)			(156)	(1,159)
Pension liability adjustments, net of deferred income taxes of \$(6,965)					16,741		16,741
Marketable securities unrealized gains, net of deferred income taxes of (\$1)					1		1
Stock options exercised, 101,698 shares	127	(836)	1,732				1,023
Net issuance of stock – vesting of restricted stock units, 69,515 shares	136	(1,254)	(188)				(1,306)
Amortization of unearned compensation on restricted stock units, net of forfeitures			2,450				2,450
<b>Balances, September 30, 2010</b>	<u>\$ 139,497</u>	<u>\$ (737,106)</u>	<u>\$ 140,737</u>	<u>\$ 2,141,560</u>	<u>\$ (182,571)</u>	<u>\$ 35,680</u>	<u>\$ 1,537,797</u>

See accompanying notes to unaudited condensed consolidated financial statements.

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**HARSCO CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (Unaudited)**

(In thousands)	Three Months Ended September 30	
	2010	2009
Net income	<u>\$ 20,932</u>	<u>\$ 23,301</u>
Other comprehensive income (loss):		
Foreign currency translation adjustments	90,599	44,565
Net gains (losses) on cash flow hedging instruments, net of deferred income taxes of (\$382) and \$779 in 2010 and 2009, respectively	1,089	(1,902)
Reclassification adjustment for losses on cash flow hedging instruments included in net income, net of deferred income taxes (\$325) in 2009	1	606
Pension liability adjustments, net of deferred income taxes of \$4,130 and (\$4,221) in 2010 and 2009, respectively	(8,745)	9,334
Unrealized gain on marketable securities, net of deferred income taxes of (\$3) and (\$7) in 2010 and 2009, respectively	4	13

Total other comprehensive income	<u>82,948</u>	52,616
Total comprehensive income	<b>103,880</b>	75,917
Less: Comprehensive income attributable to noncontrolling interests	<u>(1,616)</u>	(3,005)
Comprehensive income attributable to Harsco Corporation	<u>\$ 102,264</u>	<u>\$ 72,912</u>
	<b>Nine Months Ended</b>	
	<b>September 30</b>	
	<u>2010</u>	<u>2009</u>
<b>(In thousands)</b>		
Net income	<u>\$ 62,321</u>	<u>\$ 84,564</u>
Other comprehensive income (loss):		
Foreign currency translation adjustments	<b>(8,493)</b>	94,575
Net gains (losses) on cash flow hedging instruments, net of deferred income taxes of (\$3,580) and \$9,325 in 2010 and 2009, respectively	<b>10,560</b>	(26,010)
Reclassification adjustment for (gains) losses on cash flow hedging instruments included in net income, net of deferred income taxes of (\$10) and \$796 in 2010 and 2009, respectively	<b>16</b>	(1,476)
Pension liability adjustments, net of deferred income taxes of (\$6,965) and \$4,775 in 2010 and 2009, respectively	<b>16,741</b>	(10,569)
Unrealized gain on marketable securities, net of deferred income taxes of (\$2) and (\$5) in 2010 and 2009, respectively	<b>3</b>	9
Reclassification adjustment for gain on marketable securities, net of deferred income taxes of \$1 in 2010	<u>(2)</u>	<u>—</u>
Total other comprehensive income	<u>18,825</u>	56,529
Total comprehensive income	<b>81,146</b>	141,093
Less: Comprehensive income attributable to noncontrolling interests	<u>(4,157)</u>	(5,479)
Comprehensive income attributable to Harsco Corporation	<u>\$ 76,989</u>	<u>\$ 135,614</u>

See accompanying notes to unaudited condensed consolidated financial statements.

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**HARSCO CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS (Unaudited)**

**A. Basis of Presentation**

The unaudited condensed consolidated financial statements and notes included in this report have been prepared by management of Harsco Corporation (the "Company"). In the opinion of management, all adjustments (all of which are of a normal recurring nature) that are necessary for a fair presentation are reflected in the condensed consolidated financial statements and notes. The December 31, 2009 Condensed Consolidated Balance Sheet information contained in this Form 10-Q was derived from the 2009 audited financial statements, but does not include all disclosures required by accounting principles generally accepted in the United States of America for a year-end report. The unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements, including the notes thereto, included in the Company's 2009 Annual Report on Form 10-K.

The Company is involved in the normal course of business with variable interest entities ("VIE") that are operating entities in the Harsco Infrastructure and Harsco Metals Segments. Generally, VIEs are utilized in countries with foreign ownership requirements or to facilitate the Company's entry into targeted growth markets. The Company considers itself to be the primary beneficiary in substantially all VIEs in which it is involved and accordingly, consolidates them in its financial statements. VIEs in which the Company is not considered to be the primary beneficiary are accounted for under the equity method and reported in the Company's Consolidated Balance Sheet as other assets. The Company's maximum exposure to loss with respect to all VIEs is limited to the carrying amounts reported in the Company's Consolidated Balance Sheet and any unfunded commitment. Neither the carrying amounts nor the unfunded commitments related to these VIEs are considered material.

During the third quarter of 2009, the Company recorded non-cash, out-of-period adjustments that had the net effect of reducing after-tax income by \$9 million or \$0.11 per diluted share. The adjustments corrected errors generated principally by the improper recognition of certain revenues and the delayed recognition of certain expenses by one subsidiary, in one country, during the prior three years. Based upon the Company's investigation, which was completed by December 31, 2009, these errors primarily related to the failure to receive advance customer agreement and to invoice on a timely basis for additional work performed for two customers. The Company assessed the individual and aggregate impact of these adjustments on 2009 and all prior periods and determined that the cumulative effect of the adjustments was not material to the full year 2009 results and did not result in a material misstatement to any previously issued annual or quarterly financial statements. Consequently, the Company recorded the \$9 million net adjustment in the third quarter of 2009 and did not revise any previously issued annual financial statements or interim financial data.

Segment information for prior periods has been reclassified to conform with the current presentation. The Harsco Rail operating segment, which was previously a component of the All Other Category, is now reported separately.

The Company's management has evaluated all activity of the Company and concluded that subsequent events are properly reflected in the Company's unaudited condensed consolidated financial statements and notes as required by standards for accounting and disclosure of subsequent events.

Operating results and cash flows for the three and nine months ended September 30, 2010 are not necessarily indicative of the results that may be expected for the year ending December 31, 2010.

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**B. Review of Operations by Segment**

<u>(In thousands)</u>	<u>Three Months Ended September 30, 2010</u>		<u>Three Months Ended September 30, 2009</u>	
	<u>Revenues</u>	<u>Operating Income (Loss)</u>	<u>Revenues</u>	<u>Operating Income (Loss)</u>
Harsco Infrastructure Segment	\$ 253,569	\$ (13,643)	\$ 279,450	\$ 22,503
Harsco Metals Segment	313,214	19,443	275,093	(4,420)
Harsco Rail Segment	70,675	14,401	77,237	14,785
Segment Totals	637,458	20,201	631,780	32,868
All Other Category - Harsco Minerals & Harsco Industrial	114,863	24,928	112,381	24,839
General Corporate	80	(1,059)	60	(1,283)
Total	\$ 752,401	\$ 44,070	\$ 744,221	\$ 56,424

<u>(In thousands)</u>	<u>Nine Months Ended September 30, 2010</u>		<u>Nine Months Ended September 30, 2009</u>	
	<u>Revenues</u>	<u>Operating Income (Loss)</u>	<u>Revenues</u>	<u>Operating Income (Loss)</u>
Harsco Infrastructure Segment	\$ 766,851	\$ (46,467)	\$ 871,962	\$ 66,267
Harsco Metals Segment	927,104	55,674	772,958	(3,014)
Harsco Rail Segment	252,404	56,429	231,378	44,005
Segment Totals	1,946,359	65,636	1,876,298	107,258
All Other Category - Harsco Minerals & Harsco Industrial	334,788	70,777	341,608	61,720
General Corporate	180	(2,237)	180	(5,024)
Total	\$ 2,281,327	\$ 134,176	\$ 2,218,086	\$ 163,954

**Reconciliation of Segment Operating Income to Consolidated Income from Continuing Operations Before Income Taxes and Equity Income**

<u>(In thousands)</u>	<u>Three Months Ended September 30</u>		<u>Nine Months Ended September 30</u>	
	<u>2010</u>	<u>2009</u>	<u>2010</u>	<u>2009</u>
Segment Operating Income	\$ 20,201	\$ 32,868	\$ 65,636	\$ 107,258
All Other Category - Harsco Minerals & Harsco Industrial	24,928	24,839	70,777	61,720
General Corporate	(1,059)	(1,283)	(2,237)	(5,024)
Operating income from continuing operations	44,070	56,424	134,176	163,954
Interest income	737	888	1,849	1,944
Interest expense	(15,709)	(15,822)	(47,239)	(46,621)
Income from continuing operations before income taxes and equity income	\$ 29,098	\$ 41,490	\$ 88,786	\$ 119,277

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### C. Accounts Receivable and Inventories

At September 30, 2010 and December 31, 2009, Trade accounts receivable of \$657.9 million and \$598.3 million, respectively, were net of allowances for doubtful accounts of \$21.2 million and \$24.5 million, respectively. The provision for doubtful accounts was \$2.3 million and \$2.6 million for the three months ended September 30, 2010 and 2009, respectively. For the nine months ended September 30, 2010 and 2009, the provision for doubtful accounts was \$7.0 million and \$10.8 million, respectively. Other receivables of \$28.8 million and \$30.9 million at September 30, 2010 and December 31, 2009, respectively, include insurance claim receivables, employee receivables, tax claim receivables and other miscellaneous receivables not included in Trade accounts receivable, net.

(In thousands)	Inventories	
	September 30 2010	December 31 2009
Finished goods	\$ 129,449	\$ 146,104
Work-in-process	26,484	19,381
Raw materials and purchased parts	82,421	84,542
Stores and supplies	40,568	41,147
Total inventories	\$ 278,922	\$ 291,174

### D. Property, Plant and Equipment

(In thousands)	September 30 2010	December 31 2009
Land and improvements	\$ 47,269	\$ 46,198
Buildings and improvements	199,587	207,280
Machinery and equipment	3,138,000	3,146,358
Uncompleted construction	60,855	50,252
Gross property, plant and equipment	3,445,711	3,450,088
Less accumulated depreciation	(2,017,006)	(1,939,287)
Property, plant and equipment, net	\$ 1,428,705	\$ 1,510,801

### E. Goodwill and Other Intangible Assets

#### Goodwill by Segment

(In thousands)	Harsco Infrastructure Segment	Harsco Metals Segment	Harsco Rail Segment	All Other Category – Harsco Minerals & Harsco Industrial	Consolidated Totals
Balance as of December 31, 2009	\$ 266,119	\$ 315,745	\$ 8,979	\$ 108,198	\$ 699,041
Goodwill acquired during year (a)	11,419	—	—	—	11,419
Changes to Goodwill (b)	(1,587)	—	320	—	(1,267)
Foreign currency translation	(6,679)	(4,533)	—	280	(10,932)
<b>Balance as of September 30, 2010</b>	<b>\$ 269,272</b>	<b>\$ 311,212</b>	<b>\$ 9,299</b>	<b>\$ 108,478</b>	<b>\$ 698,261</b>

(a) Relates to the acquisition of Bell Scaffolding Group, see Note F, "Acquisitions."

(b) Relates to opening balance sheet adjustments.

The Company determined that as of September 30, 2010, no interim impairment testing was necessary. The Company's annual goodwill impairment testing will be completed during the fourth quarter of 2010. There can be no assurance that

goodwill impairment testing will not result in a charge to earnings. Should the Company experience a further degradation in the overall markets served by the Harsco Infrastructure Segment, impairment losses for assets associated with this Segment may be required. Any necessary impairment could result in the write down of the carrying value of goodwill to its implied fair value.

#### Intangible Assets by Category

(In thousands)	September 30, 2010		December 31, 2009	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Customer relationships	\$ 162,485	\$ 77,629	\$ 165,092	\$ 61,547



Non-compete agreements	1,378	1,304	1,440	1,346
Patents	6,989	4,811	7,043	4,597
Other	78,398	36,349	73,143	28,336
Total	\$ 249,250	\$ 120,093	\$ 246,718	\$ 95,826

#### Acquired Intangible Assets (a)

(In thousands)	Gross Carrying Amount	Residual Value	Weighted-average Amortization Period
Customer relationships	\$ 211	None	7 years
Trade name	4,592	None	5 years
Total	\$ 4,803		

(a) Relates to the acquisition of Bell Scaffolding Group, see Note F, "Acquisitions."

Amortization expense for intangible assets was \$8.3 million and \$24.8 million for the third quarter and first nine months of 2010, respectively. This compares with \$6.5 million and \$19.0 million for the third quarter and first nine months of 2009, respectively. The following table shows the estimated amortization expense for the next five fiscal years based on current intangible assets. These estimated amortization expense amounts do not reflect the potential effect of future foreign currency exchange rate fluctuations.

(In thousands)	2010	2011	2012	2013	2014
Estimated amortization expense	\$ 32,700	\$ 30,800	\$ 17,200	\$ 15,400	\$ 13,700

#### F. Acquisitions

In January 2010, the Company acquired Bell Scaffolding Group ("Bell"), an Australia-based infrastructure solutions provider serving the industrial, infrastructure and commercial construction sectors. Bell's capabilities range from technical design and support through supply and erect contracts. Bell generated revenues of approximately \$40 million in 2009 and has been included in the Harsco Infrastructure Segment.

Inclusion of the pro-forma financial information for this transaction is not necessary due to the immaterial size of the acquisition.

Certain of the Company's acquisitions include contingent consideration features for which defined goals must be met by the acquired business in order for payment of the consideration. Each quarter until settlement of the contingency, the Company assesses the likelihood that an acquired business will achieve the goals and the resulting fair value of the contingency. The Company has consummated acquisitions whereby the purchase price included contingent consideration based on the performance of the business during 2010 and 2011. As of September 30, 2010, the Company's assessment of these performance goals resulted in a reduction to the previously recognized contingent consideration liability of \$1.0 million and \$10.6 million for the three months and nine months ended September 30, 2010, respectively. These reductions result from, among other things, difficult end-market conditions for the business, which are

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expected to continue for the remainder of 2010. In accordance with accounting standards for acquisitions, this adjustment was recognized in operating income in the Condensed Consolidated Income Statement as a component of the Other (income) expense line item. As the fair value is evaluated on a quarterly basis, any future adjustments (increases or decreases) will also be included in operating income.

#### Net Income Attributable to the Company and Transfers to Noncontrolling Interest

The purpose of the following schedule is to disclose the effects of changes in the Company's ownership interest in its subsidiaries on the Company's equity. In September 2010, the Company acquired an increased ownership share of a consolidated subsidiary located in the United Arab Emirates from a noncontrolling interest partner. The acquisition was accounted for as an equity transaction since the Company retained its controlling interest in the subsidiary.

(In thousands)	Three Months Ended September 30		Nine Months Ended September 30	
	2010	2009	2010	2009
Net income attributable to the Company	\$ 20,179	\$ 20,182	\$ 57,876	\$ 79,382
Decrease in the Company's paid-in capital for purchase of partnership interests	(1,003)	(1,681)	(1,003)	(3,905)
Change from net income attributable to the Company and transfers to noncontrolling interest	\$ 19,176	\$ 18,501	\$ 56,873	\$ 75,477

#### G. Debt and Credit Agreements

In September 2010, the Company completed a \$250 million bond offering that bears interest at 2.7% and matures in October 2015. The net proceeds of this issuance were used to repay, in part, 200 million British pound sterling-denominated notes (approximately \$316 million) that matured October 27, 2010. Additional commercial paper borrowings were made to repay the remainder of the British pound sterling-denominated notes in excess of the proceeds from the 2010 bond issuance.

## **H. Commitments and Contingencies**

### **Environmental**

The Company is involved in a number of environmental remediation investigations and cleanups and, along with other companies, has been identified as a “potentially responsible party” for certain waste disposal sites. While each of these matters is subject to various uncertainties, it is probable that the Company will agree to make payments toward funding certain of these activities and it is possible that some of these matters will be decided unfavorably to the Company. The Company has evaluated its potential liability, and its financial exposure is dependent upon such factors as the continuing evolution of environmental laws and regulatory requirements; the availability and application of technology; the allocation of cost among potentially responsible parties; the years of remedial activity required and the remediation methods selected. The Condensed Consolidated Balance Sheets at September 30, 2010 and December 31, 2009 included accruals in Other current liabilities of \$3.6 million and \$3.1 million, respectively, for environmental matters. The amount charged against pre-tax income related to environmental matters totaled \$0.9 million for the third quarter of 2010. There was less than \$0.1 million charged against pre-tax income related to environmental matters for the third quarter of 2009. Amounts charged against pre-tax income for the first nine months of 2010 and 2009 totaled \$1.6 million and \$1.2 million, respectively.

The Company evaluates its liability for future environmental remediation costs on a quarterly basis. Actual costs to be incurred at identified sites in future periods may vary from the estimates, given inherent uncertainties in evaluating environmental exposures. The Company does not expect that any sum it may have to pay in connection with environmental matters in excess of the amounts recorded or disclosed above would have a material adverse effect on its financial position, results of operations or cash flows.

### **Gas Technologies Divestiture**

In October 2009, the Company and Taylor-Wharton International (“TWI”), the purchaser of the Company’s Gas Technologies business, satisfactorily resolved certain claims and counterclaims that had been submitted to arbitration. The claims and counterclaims related both to net working capital adjustments associated with the divestiture and to alleged breach of certain representations and warranties made by the Company. The settlement and related costs and

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fees were reflected in the \$15.1 million after-tax loss from discontinued operations recorded by the Company for the twelve months ended December 31, 2009.

In November 2009, TWI filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. As part of its filing, TWI filed a motion to reject certain executory contracts, including the parties’ Asset and Stock Purchase Agreement dated as of December 7, 2007 (the “ASPA”). TWI, however, did not seek to reject the settlement agreement finalized in October 2009 between the Company and TWI.

In May and June 2010, the bankruptcy court entered orders confirming TWI’s plan of reorganization and approving TWI’s rejection of certain executory contracts, including the ASPA. On June 15, 2010, reorganized TWI emerged from bankruptcy.

The Company recorded a pre-tax charge of \$5.0 million in the second quarter of 2010 related to potential and contingent claims arising as a result of the rejection of the ASPA. This charge was recorded in Loss from Discontinued Operations. Claims are inherently uncertain and, as a result, potential claims could be resolved at an amount significantly above the amount recorded.

### **Value-Added Tax Dispute**

The Company is involved in a value-added and services (“ICMS”) tax dispute with the State Revenue Authorities from the State of São Paulo, Brazil (the “SPRA”). In October 2009, the Company received notification of the SPRA’s administrative decision regarding the levying of ICMS in the State of São Paulo in relation to services provided to one of the Company’s customers in the State between January 2004 and May 2005. The assessment from the SPRA is approximately \$12 million, including tax, penalty and interest and could increase to reflect additional interest accrued since December 2007.

The Company believes that it does not have liability for this assessment and will vigorously contest it under various alternatives, including judicial appeal. Any ultimate final determination of this assessment is not likely to have a material adverse effect on the Company’s annual results of operations, cash flows or financial condition.

### **Other**

The Company has been named as one of many defendants (approximately 90 or more in most cases) in legal actions alleging personal injury from exposure to airborne asbestos over the past several decades. In their suits, the plaintiffs have named as defendants, among others, many manufacturers, distributors and installers of numerous types of equipment or products that allegedly contained asbestos.

The Company believes that the claims against it are without merit. The Company has never been a producer, manufacturer or processor of asbestos fibers. Any component within a Company product that may have contained asbestos would have been purchased from a supplier. Based on scientific and medical evidence, the Company believes that any asbestos exposure arising from normal use of any Company product never presented any harmful levels of airborne asbestos exposure, and moreover, the type of asbestos contained in any component that was used in those products was protectively encapsulated in other materials and is not associated with the types of injuries alleged in the pending suits. Finally, in most of the depositions taken of plaintiffs to date in the litigation against the Company, plaintiffs have failed to specifically identify any Company products as the source of their asbestos exposure.

The majority of the asbestos complaints pending against the Company have been filed in New York. Almost all of the New York complaints contain a standard claim for damages of \$20 million or \$25 million against the approximately 90 defendants, regardless of the individual plaintiff's alleged medical condition, and without specifically identifying any Company product as the source of plaintiff's asbestos exposure.

As of September 30, 2010, there are 20,085 pending asbestos personal injury claims filed against the Company. Of these cases, 19,593 are pending in the New York Supreme Court for New York County in New York State. The other claims, totaling 492, are filed in various counties in a number of state courts, and in certain Federal District Courts (including New York), and those complaints generally assert lesser amounts of damages than the New York State court cases or do not state any amount claimed.

As of September 30, 2010, the Company has obtained dismissal by stipulation, or summary judgment prior to trial, in 24,573 cases.

In view of the persistence of asbestos litigation nationwide, the Company expects to continue to receive additional claims. However, there have been developments during the past several years, both by certain state legislatures and by certain state courts, which could favorably affect the Company's ability to defend these asbestos claims in those jurisdictions. These developments include procedural changes, docketing changes, proof of damage requirements and other changes

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that require plaintiffs to follow specific procedures in bringing their claims and to show proof of damages before they can proceed with their claim. An example is the action taken by the New York Supreme Court (a trial court), which is responsible for managing all asbestos cases pending within New York County in the State of New York. This Court issued an order in December 2002 that created a Deferred or Inactive Docket for all pending and future asbestos claims filed by plaintiffs who cannot demonstrate that they have a malignant condition or discernable physical impairment, and an Active or In Extremis Docket for plaintiffs who are able to show such medical condition. As a result of this order, the majority of the asbestos cases filed against the Company in New York County have been moved to the Inactive Docket until such time as the plaintiffs can show that they have incurred a physical impairment. As of September 30, 2010, the Company has been listed as a defendant in 750 Active or In Extremis asbestos cases in New York County. The Court's Order has been challenged by plaintiffs.

Except with regard to the legal costs in a few limited, exceptional cases, the Company's insurance carrier has paid all legal and settlement costs and expenses to date. The Company has liability insurance coverage under various primary and excess policies that the Company believes will be available, if necessary, to substantially cover any liability that might ultimately be incurred on these claims.

The Company intends to continue its practice of vigorously defending these cases as they are listed for trial. It is not possible to predict the ultimate outcome of asbestos-related lawsuits, claims and proceedings due to the unpredictable nature of personal injury litigation. Despite this uncertainty, and although results of operations and cash flows for a given period could be adversely affected by asbestos-related lawsuits, claims and proceedings, management believes that the ultimate outcome of these cases will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

The Company is subject to various other claims and legal proceedings covering a wide range of matters that arose in the ordinary course of business. In the opinion of management, all such matters are adequately covered by insurance or by accruals, and if not so covered, are without merit or are of such kind, or involve such amounts, as would not have a material adverse effect on the financial position, results of operations or cash flows of the Company.

Insurance liabilities are recorded when it is probable that a liability has been incurred for a particular event and the amount of loss associated with the event can be reasonably estimated. Insurance reserves have been estimated based primarily upon actuarial calculations and reflect the undiscounted estimated liabilities for ultimate losses including claims incurred but not reported. Inherent in these estimates are assumptions that are based on the Company's history of claims and losses, a detailed analysis of existing claims with respect to potential value, and current legal and legislative trends. If actual claims differ from those projected by management, changes (either increases or decreases) to insurance reserves may be required and would be recorded through income in the period the change was determined. When a recognized liability is covered by third-party insurance, the Company records an insurance claim receivable to reflect the covered liability. Insurance claim receivables are included in Other receivables in the Company's Consolidated Balance Sheets. See Note 1, "Summary of Significant Accounting Policies," of the Company's Form 10-K for the year ended December 31, 2009, for additional information on Accrued Insurance and Loss Reserves.

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**I. Reconciliation of Basic and Diluted Shares**

(In thousands, except per share amounts)	Three Months Ended September 30		Nine Months Ended September 30	
	2010	2009	2010	2009
Income from continuing operations attributable to Harsco Corporation common stockholders	\$ 21,074	\$ 31,974	\$ 61,355	\$ 93,867
Weighted average shares outstanding - basic	80,574	80,315	80,559	80,285
Dilutive effect of stock-based compensation	188	316	188	272
Weighted average shares outstanding - diluted	80,762	80,631	80,747	80,557
Earnings from continuing operations per common share, attributable to Harsco Corporation common stockholders:				
Basic	\$ 0.26	\$ 0.40	\$ 0.76	\$ 1.17

Diluted \$ 0.26    \$ 0.40    \$ 0.76    \$ 1.17

At September 30, 2010, approximately 500 and 12,000 restricted stock units outstanding were not included in the three months and nine months computation of diluted earnings per share, respectively, because the effect was antidilutive. At September 30, 2009, all restricted stock units outstanding were included in the three months calculation of diluted earnings per share, but approximately 29,000 restricted stock units were not included in the nine months calculation because the effect was antidilutive.

## J. Employee Benefit Plans

Defined Benefit Net Periodic Pension Cost (In thousands)	Three Months Ended September 30			
	U. S. Plans		International Plans	
	2010	2009	2010	2009
Defined benefit plans:				
Service cost	\$ 518	\$ 447	\$ 1,009	\$ 1,062
Interest cost	3,500	3,523	11,925	11,296
Expected return on plan assets	(4,146)	(3,647)	(11,567)	(10,939)
Recognized prior service costs	84	88	90	92
Recognized losses	650	857	3,023	2,477
Amortization of transition liability	—	—	14	9
Curtailment/settlement (gain) loss	179	—	17	(79)
Defined benefit plans net periodic pension cost	<u>\$ 785</u>	<u>\$ 1,268</u>	<u>\$ 4,511</u>	<u>\$ 3,918</u>

  

Defined Benefit Net Periodic Pension Cost (In thousands)	Nine Months Ended September 30			
	U. S. Plans		International Plans	
	2010	2009	2010	2009
Defined benefit plans:				
Service cost	\$ 1,558	\$ 1,311	\$ 2,999	\$ 2,998
Interest cost	10,522	10,331	35,129	32,245
Expected return on plan assets	(12,463)	(10,693)	(34,059)	(31,212)
Recognized prior service costs	254	257	269	264
Recognized losses	1,954	2,512	8,897	6,756
Amortization of transition liability	—	—	41	23
Curtailment/settlement (gain) loss	179	—	50	(79)
Defined benefit plans net periodic pension cost	<u>\$ 2,004</u>	<u>\$ 3,718</u>	<u>\$ 13,326</u>	<u>\$ 10,995</u>

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In the quarter ended September 30, 2010, the Company contributed \$0.5 million and \$3.5 million for the U.S. and international defined benefit pension plans, respectively. In the nine months ended September 30, 2010, the Company contributed \$1.3 million and \$13.3 million for the U.S. and international defined benefit pension plans, respectively. The Company currently anticipates contributing an additional \$0.9 million and \$14.6 million for the U.S. and international defined benefit pension plans, respectively, during the remainder of 2010.

In the quarter ended September 30, 2010, the Company's contributions to multi-employer and defined contribution pension plans were \$5.4 million and \$4.7 million, respectively. In the nine months ended September 30, 2010, the Company contributed \$16.4 million and \$10.3 million to multiemployer and defined contribution plans, respectively.

## K. Recently Adopted and Recently Issued Accounting Standards

The following accounting standards were adopted in 2010:

On January 1, 2010, the Company adopted changes issued by the Financial Accounting Standards Board ("FASB") on accounting for variable interest entities ("VIE"). These changes require an enterprise to perform an analysis to determine whether the enterprise's variable interest or interests give it a controlling financial interest in a VIE; to require ongoing reassessments of whether an enterprise is the primary beneficiary of a VIE; to eliminate the solely quantitative approach previously required for determining the primary beneficiary of a VIE; to add an additional reconsideration event for determining whether an entity is a VIE when any changes in facts and circumstances occur such that holders of the equity investment at risk, as a group, lose the power from voting rights or similar rights of those investments to direct the activities of the entity that most significantly impact the entity's economic performance; and to require enhanced disclosures that will provide users of financial statements with more transparent information about an enterprise's involvement in a VIE. Other than additional disclosure requirements concerning VIEs, the adoption of these changes had no impact on the Company's consolidated financial statements.

Effective January 1, 2010, the Company adopted changes to the FASB's previously-issued guidance on accounting for noncontrolling interests in consolidated financial statements. These changes were issued by the FASB on January 6, 2010 and clarify the accounting and reporting guidance for noncontrolling interests and changes in ownership interests of a consolidated subsidiary. An entity is required to deconsolidate a subsidiary when the entity ceases to have a controlling financial interest in the subsidiary. Upon deconsolidation of a subsidiary, an entity recognizes a gain or loss on the transaction and measures any retained investment in the subsidiary at fair value. The gain or loss includes any gain or loss associated with the difference between the fair value of the retained investment in the subsidiary and its carrying amount at the date the subsidiary is deconsolidated. In contrast, an entity is required to account for a decrease in its ownership interest of a subsidiary that does not result in a change of control of the subsidiary as an equity transaction. The adoption of these changes had no impact on the Company's consolidated financial statements.

Effective January 1, 2010, the Company adopted changes issued by the FASB on January 21, 2010 related to disclosure requirements for fair value measurements. The changes require a reporting entity to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and describe the reasons for the transfers. The changes also clarify existing disclosure requirements related to how assets and liabilities should

be grouped by class and valuation techniques used for recurring and nonrecurring fair value measurements. The adoption of these changes had no impact on the Company's consolidated financial statements.

Effective January 1, 2010, the Company adopted changes issued by the FASB on February 24, 2010 to the accounting for and disclosure of events that occur after the balance sheet date, but before financial statements are issued or are available to be issued, generally referred to as "subsequent events." These changes clarified that an entity that is required to file or furnish its financial statements with the Securities and Exchange Commission is not required to disclose the date through which subsequent events have been evaluated. Other than the elimination of disclosing this date, the adoption of these changes had no impact on the Company's consolidated financial statements.

The following accounting standards have been issued and become effective for the Company at various future dates:

In October 2009, the FASB issued changes related to the accounting for revenue recognition when multiple-deliverable revenue arrangements are present. The changes eliminate the residual method of revenue allocation and require revenue to be allocated using the relative selling price method. This method requires a vendor to use its best estimate of selling price if neither vendor-specific objective evidence nor third-party evidence of selling price exists when evaluating multiple deliverable arrangements. These changes must be adopted no later than January 1, 2011 and may be adopted prospectively for revenue arrangements entered into or materially modified after the date of adoption or retrospectively for

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all revenue arrangements for all periods presented. Management is currently evaluating the requirements of these changes and has not yet determined the impact on the Company's consolidated financial statements.

In January 2010, the FASB issued changes to disclosure requirements for fair value measurements. The changes require a reporting entity to disclose, in the reconciliation of fair value measurements using significant unobservable inputs (Level 3), separate information about purchases, sales, issuances, and settlements (that is, on a gross basis rather than as one net number). These changes become effective for the Company beginning January 1, 2011. Other than the additional disclosure requirements, management has determined these changes will not have an impact on the Company's consolidated financial statements.

**L. Derivative Instruments, Hedging Activities and Fair Value**

The Company uses derivative instruments, including swaps and forward contracts, to manage certain foreign currency, commodity price and interest rate exposures. Derivative instruments are viewed as risk management tools by the Company and are not used for trading or speculative purposes.

All derivative instruments are recorded on the Condensed Consolidated Balance Sheet at fair value. Changes in the fair value of derivatives used to hedge foreign-currency-denominated balance sheet items are reported directly in earnings along with offsetting transaction gains and losses on the items being hedged. Derivatives used to hedge forecasted cash flows associated with foreign currency commitments or forecasted commodity purchases may be accounted for as cash flow hedges as deemed appropriate and if the criteria for hedge accounting are met. Gains and losses on derivatives designated as cash flow hedges are deferred as a separate component of equity and reclassified to earnings in a manner that matches the timing of the earnings impact of the hedged transactions. Generally, at September 30, 2010, such deferred gains and losses will be reclassified to earnings within three months for commodity contract derivatives and over 10 to 15 years for foreign currency forward exchange contracts. The ineffective portion of all hedges, if any, is recognized currently in earnings.

The fair values of outstanding derivative contracts recorded as assets and liabilities in the accompanying Condensed Consolidated Balance Sheets were as follows:

(In thousands)	Fair Values of Derivative Contracts		
	Other current assets	Other assets	Other current liabilities
<b>At September 30, 2010:</b>			
Derivatives designated as hedging instruments:			
Commodity contracts	\$ 36	\$ —	\$ —
Cross-currency interest rate swap	—	32,406	—
Foreign currency forward exchange contracts	—	—	5
Total derivatives designated as hedging instruments	\$ 36	\$ 32,406	\$ 5
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	\$ 2,820	\$ —	\$ 4,040
<b>At December 31, 2009:</b>			
Derivatives designated as hedging instruments:			
Foreign currency forward exchange contracts	\$ —	\$ —	\$ 14
Cross-currency interest rate swap	—	7,357	—
Total derivatives designated as hedging instruments	\$ —	\$ 7,357	\$ 14
Derivatives not designated as hedging instruments:			
Foreign currency forward exchange contracts	\$ 2,187	\$ —	\$ 590

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The effect of derivative instruments on the Condensed Consolidated Statements of Income and the Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2010 and 2009 was as follows:

### Derivatives Designated as Hedging Instruments

(In thousands)	Amount of Gain (Loss) Recognized in Other Comprehensive Income ("OCI") on Derivative - Effective Portion	Location of Gain (Loss) Reclassified from Accumulated OCI into Income - Effective Portion	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income - Effective Portion	Location of Gain (Loss) Recognized in Income on Derivative - Ineffective Portion and Amount Excluded from Effectiveness Testing	Amount of Gain (Loss) Recognized in Income on Derivative - Ineffective Portion and Amount Excluded from Effectiveness Testing
<b>For the three months ended September 30, 2010:</b>					
Foreign currency forward exchange contracts	\$ 5		\$ —		\$ —
Commodity contracts	40	Cost of services and products sold	(1)	Cost of services and products sold	26
Cross-currency interest rate swap	1,426		—	Cost of services and products sold	(23,052) (a)
	<u>\$ 1,471</u>		<u>\$ (1)</u>		<u>\$ (23,026)</u>
<b>For the three months ended September 30, 2009:</b>					
Foreign currency forward exchange contracts	\$ (57)	Cost of services and products sold	\$ (8)		\$ —
Commodity contracts	(1,130)	Service revenues	(923)	Service revenues	259
Cross-currency interest rate swap	(1,494)		—	Cost of services and products sold	(7,920) (a)
	<u>\$ (2,681)</u>		<u>\$ (931)</u>		<u>\$ (7,661)</u>

(a) These losses offset foreign currency fluctuation effects on the debt principal.

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### Derivatives Designated as Hedging Instruments

(In thousands)	Amount of Gain (Loss) Recognized in Other Comprehensive Income ("OCI") on Derivative - Effective Portion	Location of Gain (Loss) Reclassified from Accumulated OCI into Income - Effective Portion	Amount of Gain (Loss) Reclassified from Accumulated OCI into Income - Effective Portion	Location of Gain (Loss) Recognized in Income on Derivative - Ineffective Portion and Amount Excluded from Effectiveness Testing	Amount of Gain (Loss) Recognized in Income on Derivative - Ineffective Portion and Amount Excluded from Effectiveness Testing
<b>For the nine months ended September 30, 2010:</b>					
Foreign currency forward exchange contracts	\$ 144		\$ —		\$ —
Commodity contracts	7	Cost of services and products sold	(26)	Cost of services and products sold	6
Cross-currency interest rate swap	13,989		—	Cost of services and products sold	11,059(a)
	<u>\$ 14,140</u>		<u>\$ (26)</u>		<u>\$ 11,065</u>
<b>For the nine months ended September 30, 2009:</b>					
Foreign currency forward exchange contracts	\$ (54)		\$ —		\$ —
Commodity contracts	(3,334)	Service revenues	2,272	Service revenues	(243)
Cross-currency interest rate swap	(31,947)		—	Cost of services and products sold	(9,707) (a)
	<u>\$ (35,335)</u>		<u>\$ 2,272</u>		<u>\$ (9,950)</u>

(a) These gains (losses) offset foreign currency fluctuation effects on the debt principal.

### Derivatives Not Designated as Hedging Instruments

(In thousands)	Location of Gain (Loss) Recognized in Income on Derivative	Amount of Gain (Loss) Recognized in Income on Derivative for the Three Months Ended September 30 (a)	
		2010	2009
Foreign currency forward exchange contracts	Cost of services and products sold	\$ (5,495)	\$ (1,946)

(a) These losses offset amounts recognized in cost of service and products sold principally as a result of intercompany or third party foreign currency exposures.

#### Derivatives Not Designated as Hedging Instruments

(In thousands)	Location of Gain (Loss) Recognized in Income on Derivative	Amount of Gain (Loss) Recognized in Income on Derivative for the Nine Months Ended September 30 (a)	
		2010	2009
Foreign currency forward exchange contracts	Cost of services and products sold	\$ 2,591	\$ (8,704)

(a) These gains (losses) offset amounts recognized in cost of service and products sold principally as a result of intercompany or third party foreign currency exposures.

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#### Commodity Derivatives

The Company periodically uses derivative instruments to hedge cash flows associated with purchase or selling price exposure to certain commodities. The Company's commodity derivative activities are subject to the management, direction and control of the Company's Risk Management Committee, which approves the use of all commodity derivative instruments.

At September 30, 2010, the Company's open commodity derivative contract positions qualified as cash flow hedges under the requirements for hedge accounting and consisted of unsecured swap contracts maturing in December 2010. The notional value of these contracts is equal to the hedged volume multiplied by the strike price of the derivative and totaled \$0.3 million. All contracts are with major financial institutions. In the event of non-performance by the other parties to the contracts, the Company may be exposed to credit loss. The Company evaluates the credit-worthiness of the counterparties and does not expect default by them. There were no commodity derivative contracts outstanding at December 31, 2009.

Although earnings volatility may occur between fiscal quarters due to hedge ineffectiveness, or if the derivatives do not qualify as cash flow hedges under hedge accounting standards, the economic substance of the derivatives provides more predictable cash flows by reducing the Company's exposure to the commodity price fluctuations.

#### Foreign Currency Forward Exchange Contracts

The Company conducts business in multiple currencies and, accordingly, is subject to the inherent risks associated with foreign exchange rate movements. The financial position and results of operations of substantially all of the Company's foreign subsidiaries are measured using the local currency as the functional currency. Foreign currency denominated assets and liabilities are translated into U.S. dollars at the exchange rates existing at the respective balance sheet dates, and income and expense items are translated at the average exchange rates during the respective periods. The aggregate effects of translating the balance sheets of these subsidiaries are deferred and recorded in Accumulated other comprehensive loss, which is a separate component of equity.

The Company uses derivative instruments to hedge cash flows related to foreign currency fluctuations. At September 30, 2010 and December 31, 2009, the Company had \$301.9 million and \$122.1 million, respectively, of contracted notional amounts of unsecured foreign currency forward exchange contracts outstanding. These contracts are part of a worldwide program to minimize foreign currency exchange operating income and balance sheet exposure by offsetting foreign currency exposures of certain future payments between the Company and its various subsidiaries, vendors or customers. The contracts outstanding at September 30, 2010 mature at various times within five months and are with major financial institutions. The Company may be exposed to credit loss in the event of non-performance by the contract counterparties. The Company evaluates the credit worthiness of the counterparties and does not expect default by them. Foreign currency forward exchange contracts are used to hedge commitments, such as foreign currency debt, firm purchase commitments and foreign currency cash flows for certain export sale transactions.

The following tables summarize, by major currency, the contractual notional amounts of the Company's foreign currency forward exchange contracts in U.S. dollars at September 30, 2010 and December 31, 2009. The "Buy" amounts represent the U.S. dollar equivalent of commitments to purchase foreign currencies, and the "Sell" amounts represent the U.S. dollar equivalent of commitments to sell foreign currencies. Recognized gains and losses offset amounts recognized in cost of services and products sold principally as a result of intercompany or third party foreign currency exposures.

#### Foreign Currency Forward Exchange Contracts

(In thousands)	Type	At September 30, 2010		
		U.S. Dollar Equivalent	Maturity	Recognized Gain (Loss)
British pounds sterling	Sell	\$ 38,770	October 2010	\$ (303)
British pounds sterling	Buy	30,430	October 2010	445
Euros	Sell	104,278	October 2010 through November 2010	(3,373)

Euros	Buy	112,201	October 2010 through November 2010	1,877
Other currencies	Sell	8,486	October 2010 through February 2011	(130)
Other currencies	Buy	7,749	October 2010	259
Total		\$ 301,914		\$ (1,225)

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**Foreign Currency Forward Exchange Contracts**

At December 31, 2009				
(In thousands)	Type	U.S. Dollar Equivalent	Maturity	Recognized Gain (Loss)
British pounds sterling	Sell	\$ 715	January 2010 through March 2010	\$ (18)
British pounds sterling	Buy	3,354	January 2010	67
Euros	Sell	72,068	January 2010 through February 2010	1,820
Euros	Buy	38,967	January 2010	(346)
Other currencies	Sell	4,155	January 2010 through February 2010	72
Other currencies	Buy	2,867	January 2010 through March 2010	(12)
Total		\$ 122,126		\$ 1,583

In addition to foreign currency forward exchange contracts, the Company designates certain loans as hedges of net investments in foreign subsidiaries. The Company recorded gains of \$36.6 million and \$15.0 million during the three months ended September 30, 2010 and 2009, respectively, and a loss of \$15.5 million and a gain of \$15.0 million during the nine months ended September 30, 2010 and 2009, respectively, in Accumulated other comprehensive loss, which is a separate component of stockholders' equity, related to hedges of net investments.

**Cross-Currency Interest Rate Swap**

In May 2008, the Company entered into a ten-year, \$250.0 million cross-currency interest rate swap in conjunction with a debt issuance in order to lock in a fixed euro interest rate for \$250.0 million of the issuance. Under the swap, the Company receives interest based on a fixed U.S. dollar rate and pays interest on a fixed euro rate on the outstanding notional principal amounts in dollars and euros, respectively. The cross-currency interest rate swap is recorded in the Condensed Consolidated Balance Sheets at fair value, with changes in value attributed to the effect of the swaps' interest spread recorded in Accumulated other comprehensive loss, which is a separate component of equity. Changes in value attributed to the effect of foreign currency fluctuations are recorded in the Condensed Consolidated Income Statement and offset currency fluctuation effects on the debt principal.

**Fair Value of Derivative Assets and Liabilities and Other Financial Instruments**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (an exit price). The Company utilizes market data or assumptions that the Company believes market participants would use in pricing the asset or liability, including assumptions about risk and the risks inherent in the inputs to the valuation technique.

The fair value hierarchy distinguishes between (1) market participant assumptions developed based on market data obtained from independent sources (observable inputs) and (2) an entity's own assumptions about market participant assumptions developed based on the best information available in the circumstances (unobservable inputs). The fair value hierarchy consists of three broad levels, which gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy are described below:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities.
- Level 2—Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly, including quoted prices for similar assets or liabilities in active markets; quoted prices for identical or similar assets or liabilities in markets that are not active; inputs other than quoted prices that are observable for the asset or liability (e.g., interest rates); and inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- Level 3—Inputs that are both significant to the fair value measurement and unobservable.

In instances in which multiple levels of inputs are used to measure fair value, hierarchy classification is based on the lowest level input that is significant to the fair value measurement in its entirety. The Company's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability.

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The following table indicates the different financial instruments of the Company at September 30, 2010 and December 31, 2009.

**Level 2 Fair Value Measurements**

(In thousands)	September 30 2010	December 31 2009
<b>Assets</b>		
Foreign currency forward exchange contracts	\$ 2,820	\$ 2,187
Commodity derivatives	36	—
Cross-currency interest rate swap	32,406	7,357



**Liabilities**

Foreign currency forward exchange contracts	4,045	604
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**Level 3 Fair Value Measurements**

(In thousands)	September 30 2010	December 31 2009
<b>Liabilities</b>		
Contingent consideration for acquisitions	\$ 3,620	\$ 9,735

The following table reconciles the beginning and ending balances for liabilities measured on a recurring basis using unobservable inputs (Level 3) for the three months and nine months ended September 30, 2010. There were no Level 3 liabilities for the corresponding periods in 2009.

**Level 3 Liabilities - Contingent Consideration**

(In thousands)	Three Months Ended September 30 2010	Nine Months Ended September 30 2010
Balance at beginning of period	\$ 4,722	\$ 9,735
Acquisitions during the period	—	4,618
Fair value adjustments included in earnings	(1,102)	(10,733)
Balance September 30, 2010	<u>\$ 3,620</u>	<u>\$ 3,620</u>

The Company primarily applies the market approach for recurring fair value measurements and endeavors to utilize the best available information. Accordingly, the Company utilizes valuation techniques that maximize the use of observable inputs, such as forward rates, interest rates, the Company's credit risk and counterparties' credit risks, and minimize the use of unobservable inputs. The Company is able to classify fair value balances based on the observability of those inputs. Commodity derivatives, foreign currency forward exchange contracts and cross-currency interest rate swaps are classified as Level 2 fair value based upon pricing models using market-based inputs. Model inputs can be verified, and valuation techniques do not involve significant management judgment.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, accrued liabilities, and short-term borrowings approximate fair value due to the short-term maturities of these assets and liabilities. At September 30, 2010, and December 31, 2009, total fair value of long-term debt, including current maturities, was \$1,237.7 million and \$965.5 million, respectively, compared to carrying value of \$1,170.4 million and \$927.5 million, respectively. Fair values for debt are based on quoted market prices for the same or similar issues or on the current rates offered to the Company for debt of the same remaining maturities.

**M. Restructuring Programs****2010 Restructuring Program**

As a result of the continued financial and economic downturn, the Company implemented additional actions in 2010 to further reduce its cost structure and close certain facilities. The Harsco Infrastructure and Harsco Metals Segments recorded net pre-tax restructuring charges totaling \$2.4 million and \$14.4 million in the quarter and nine months ended

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September 30, 2010, respectively, in the Other (income) expense line of the Condensed Consolidated Income Statements. These restructuring actions are expected to be completed over the next 12 months, but principally during the remainder of 2010.

Through September 30, 2010, the Company completed workforce reductions related to these actions of 261 employees of a total expected workforce reduction of 416 employees. Remaining workforce reductions and costs to exit activities are targeted for completion during the remainder of 2010.

The Company anticipates that a comprehensive restructuring plan will be developed, approved and announced in the fourth quarter of 2010 with resulting cost reductions that should benefit the operating results for 2011 and beyond in the Harsco Infrastructure Segment. The plan is being developed to further streamline and reduce the cost base in this business to better align it to expected near-term end-market conditions and could materially impact the fourth quarter 2010 results. In October 2010, a plan to rationalize certain North America products was approved. This will result in the disposal of rental assets and reduce pre-tax income by approximately \$9 million (net of scrap or sale proceeds) in the fourth quarter of 2010.

**2008 Restructuring Program**

The 2008 program was designed to improve organizational efficiency and enhance profitability and stockholder value by generating sustainable operating expense savings. Under this program, the Company principally exited certain underperforming contracts with customers, closed certain facilities and reduced the global workforce. Restructuring costs were incurred primarily in the Harsco Metals and Harsco Infrastructure Segments and recorded in the Other (income) expense line of the Condensed Consolidated Income Statements. In the fourth quarter of 2008, the Company recorded net pre-tax restructuring and other related charges totaling \$36.1 million, including \$28.0 million in Other expense, \$5.8 million reduction in services revenue, a net \$1.5 million related to pension curtailments and \$0.8 million of other costs.

Through September 30, 2010, the Company has completed substantially all workforce reductions under the 2008 restructuring program totaling 1,429 employees related to this restructuring program. Remaining exit activities relate to the Harsco Metals Segment and are targeted for completion during 2010. These restructuring activities were not completed in 2009 due to continued negotiations with labor unions and customers that resulted in changes to estimates of the amount of restructuring costs and the timing of their settlement.

The restructuring accrual at September 30, 2010 and the activity for the nine months then ended by segment is as follows:

(In thousands)	Accrual December 31 2009	2010 Restructuring Program Charges	Adjustments to Previously Recorded Restructuring Charges (a)	Cash Expenditures	Remaining Accrual September 30 2010
<b>Harsco Infrastructure Segment</b>					
Employee termination benefit costs	\$ 122	\$ 6,306	\$ —	\$ (5,269)	\$ 1,159
Cost to exit activities	—	5,139	—	(4,374)	765
Total Harsco Infrastructure Segment	<u>122</u>	<u>11,445</u>	<u>—</u>	<u>(9,643)</u>	<u>1,924</u>
<b>Harsco Metals Segment</b>					
Employee termination benefit costs	3,317	2,180	(7)	(4,667)	823
Cost to exit activities	186	786	(55)	(268)	649
Total Harsco Metals Segment	<u>3,503</u>	<u>2,966</u>	<u>(62)</u>	<u>(4,935)</u>	<u>1,472</u>
Total	<u>\$ 3,625</u>	<u>\$ 14,411</u>	<u>\$ (62)</u>	<u>\$ (14,578)</u>	<u>\$ 3,396</u>

(a) Adjustments to previously recorded cost to exit activities resulted from changes in facts and circumstances in the implementation of these activities.

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The majority of the remaining cash expenditures of \$3.4 million related to these actions are expected to be paid throughout the remainder of 2010. There were no significant restructuring actions in 2009.

**N. Income Taxes**

Income tax expense from continuing operations increased due to lower earnings from continuing operations in jurisdictions with lower tax rates, resulting in an increase in the effective income tax rate from continuing operations. The effective income tax rate relating to continuing operations for the three and nine months ended September 30, 2010 was 25.4% and 26.2%, respectively, compared with 15.7% and 17.2%, respectively, for the three and nine months ended September 30, 2009. The effective income tax rate for the first nine months of 2009 reflected net discrete tax benefits recognized in the first quarter related to a change in the permanent reinvestment of prior-year undistributed earnings.

An income tax benefit from an uncertain tax position may be recognized when it is more-likely-than-not that the position will be sustained upon examination, including resolutions of any related appeals or litigation processes, based on technical merits. The unrecognized income tax benefit at September 30, 2010 was \$47.6 million including interest and penalties. Within the next twelve months, it is reasonably possible that up to \$8.3 million of such amount will be recognized upon settlement of tax examinations and the expiration of various statutes of limitation.

**O. Other (Income) Expense**

This income statement classification includes restructuring costs for employee termination benefits and costs to exit activities; impaired asset write-downs; net gains or losses on the disposal of non-core assets; and business combination accounting adjustments related to recent acquisitions by the Company.

(In thousands)	Three Months Ended September 30		Nine Months Ended September 30	
	2010	2009	2010	2009
Restructuring costs	\$ 2,089	\$ 7,199	\$ 14,494	\$ 12,387
Gains from sale of non-core assets	(758)	(969)	(6,612)	(6,754)
Contingent consideration adjustments	(989)	—	(10,620)	—
Other	541	668	718	794
Other (income) expense	<u>\$ 883</u>	<u>\$ 6,898</u>	<u>\$ (2,020)</u>	<u>\$ 6,427</u>

For the three months and nine months ended September 30, 2010, restructuring costs were incurred principally in the Harsco Infrastructure Segment.

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

The following discussion should be read in conjunction with the accompanying unaudited financial statements as well as the Company's annual Form 10-K for the year ended December 31, 2009, which included additional information about the Company's critical accounting policies, contractual obligations, practices and the transactions that support the financial results, and provided a more comprehensive summary of the Company's outlook, trends and strategies for 2010 and beyond.

Throughout this discussion, segment information for prior periods has been reclassified to conform with the current presentation. The Harsco Rail operating segment, which was previously a component of the All Other Category, is now reported separately.

**Forward-Looking Statements**

The nature of the Company's business and the many countries in which it operates subject it to changing economic, competitive, regulatory and technological conditions, risks and uncertainties. In accordance with the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, the Company provides the following cautionary remarks regarding important factors that, among others, could cause future results to differ materially from the forward-looking statements, expectations and assumptions expressed or implied herein. Forward-looking statements contained herein could include, among other things, statements about our management confidence and strategies for performance; expectations for new and existing products, technologies and opportunities; and expectations regarding growth, sales, cash flows, earnings and Economic Value Added ("EVA®"). These statements can be identified by the use of such terms as "may," "could," "expect," "anticipate," "intend," "believe" or other comparable terms.

Factors that could cause results to differ include, but are not limited to: (1) changes in the worldwide business environment in which the Company operates, including general economic conditions; (2) changes in currency exchange rates, interest rates, commodity and fuel costs and capital costs; (3) changes in the performance of stock and bond markets that could affect, among other things, the valuation of the assets in the Company's pension plans and the accounting for pension assets, liabilities and expenses; (4) changes in governmental laws and regulations, including environmental, tax and import tariff standards; (5) market and competitive changes, including pricing pressures, market demand and acceptance for new products, services and technologies; (6) unforeseen business disruptions in one or more of the many countries in which the Company operates due to political instability, civil disobedience, armed hostilities, public health issues or other calamities; (7) the seasonal nature of the business; (8) our ability to successfully enter into new contracts and complete new acquisitions or joint ventures in the timeframe contemplated or at all; (9) the integration of the Company's strategic acquisitions; (10) the amount and timing of repurchases of the Company's common stock, if any; (11) the ongoing global financial and credit crisis, which could result in our customers curtailing development projects, construction, production and capital expenditures, which, in turn, could reduce the demand for our products and services and, accordingly, our sales, margins and profitability; (12) the financial condition of our customers, including the ability of customers (especially those that may be highly leveraged and those with inadequate liquidity) to maintain their credit availability; (13) our ability to successfully implement cost-reduction initiatives; and (14) other risk factors listed from time to time in the Company's SEC reports. A further discussion of these, along with other potential factors, can be found in Part I, Item 1A, "Risk Factors," of the Company's Form 10-K for the year ended December 31, 2009. The Company cautions that these factors may not be exhaustive and that many of these factors are beyond the Company's ability to control or predict. Accordingly, forward-looking statements should not be relied upon as a prediction of actual results. The Company undertakes no duty to update forward-looking statements except as may be required by law.

**Executive Overview**

Revenues for the Company during the third quarter of 2010 were \$752.4 million compared with \$744.2 million in 2009. The Company generated higher revenues in the third quarter of 2010 in the Harsco Metals Segment due to an increase in customer steel production. This was partially offset by weaker global non-residential construction demand within the Harsco Infrastructure Segment. Foreign currency translation decreased revenues by \$15.9 million for the third quarter 2010 in comparison with last year. Incremental revenues for the Harsco Infrastructure Segment included \$20.9 million from acquisitions in the Asia-Pacific, Latin America and Middle East and Africa regions for the three months ended September 30, 2010 compared with last year.

Revenues by Segment	Three Months Ended September 30			Percentage Change from 2009 to 2010		
	2010	2009	Change	Price/ Volume	Currency	Total
(Dollars in millions)						
Harsco Infrastructure	\$ 253.6	\$ 279.5	\$ (25.9)	(5.0)%	(4.3)%	(9.3)%
Harsco Metals	313.2	275.1	38.1	15.3	(1.5)	13.8
Harsco Rail	70.7	77.2	(6.5)	(8.5)	0.1	(8.4)
All Other Category	114.9	112.4	2.5	2.0	0.2	2.2
Corporate	—	—	—	—	—	—
Total Revenues	\$ 752.4	\$ 744.2	\$ 8.2	3.2%	(2.1)%	1.1%

Revenues for the first nine months of 2010 were \$2.3 billion, \$63.2 million higher than in the same period for 2009. The Company generated higher revenues for the first nine months of 2010 in the Harsco Metals Segment due to an increase in global steel production and in the Harsco Rail Segment due to shipments under existing contracts. This was offset by weaker demand during the first nine months within the Harsco Infrastructure Segment due to distressed market conditions in global non-residential construction. Foreign currency translation increased revenues by \$10.1 million for the first nine

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months of 2010 in comparison with last year. Incremental revenues for the Harsco Infrastructure Segment included \$61.0 million from acquisitions in the Asia-Pacific, Latin America and Middle East and Africa regions for the nine months ended September 30, 2010 compared with last year.

Revenues by Segment	Nine Months Ended September 30			Percentage Change from 2009 to 2010		
	2010	2009	Change	Price/ Volume	Currency	Total
(Dollars in millions)						
Harsco Infrastructure	\$ 766.9	\$ 872.0	\$ (105.1)	(10.9)%	(1.2)%	(12.1)%
Harsco Metals	927.1	773.0	154.1	17.7	2.2	19.9
Harsco Rail	252.4	231.4	21.0	8.6	0.5	9.1
All Other Category	334.8	341.6	(6.8)	(2.6)	0.6	(2.0)
Corporate	0.1	0.1	—	—	—	—
Total Revenues	\$ 2,281.3	\$ 2,218.1	\$ 63.2	2.4%	0.5%	2.9%

The following factors contributed positively to the Company's results in the first nine months of 2010:

- Increased global steel production by the customers served by the Company;
- Continued strong performance of Harsco Rail resulting from increased shipments and leaner operations;
- Increased metals pricing benefitting Harsco Minerals;
- A slightly weaker U.S. dollar during 2010 compared with 2009;
- Prudent capital spending, contributing to higher discretionary cash flows;

- Further implementation of internal countermeasures to improve efficiency and avoid unnecessary costs; and
- The Company's global continuous improvement initiative.

These positive factors were partially offset by the following major challenges, emanating from the global recession which began in 2008 and continued to negatively impact the Harsco Infrastructure Segment during the first nine months of 2010:

- A lack of meaningful commercial and multi-family construction activity in the United States and across Europe due to the depressed demand;
- Reduced demand in the Gulf Region of the Middle East due to the Dubai sovereign debt crisis;
- Pricing pressures as global customers continued to seek lower cost solutions and increased competition for remaining projects; and
- Postponements, deferrals and cancellation of jobs and projects.

The Company continues to execute on its geographic expansion strategy, as revenues from targeted growth markets were approximately 25% of total revenues in the first nine months of 2010, compared with 21% for the first nine months of 2009 and 23% for calendar year 2009.

Revenues by Region	Three Months Ended September 30			Percentage Change from 2009 to 2010		
	2010	2009	Change	Price/ Volume	Currency	Total
(Dollars in millions)						
Western Europe	\$ 297.3	\$ 310.0	\$ (12.7)	2.4%	(6.5)%	(4.1)%
North America	258.9	256.6	2.3	0.7	0.2	0.9
Latin America (a)	76.0	53.0	23.0	37.8	5.6	43.4
Middle East and Africa	45.7	59.7	(14.0)	(24.8)	1.4	(23.4)
Asia-Pacific	41.6	31.2	10.4	26.1	7.3	33.4
Eastern Europe	32.9	33.7	(0.8)	4.7	(7.1)	(2.4)
Total Revenues	\$ 752.4	\$ 744.2	\$ 8.2	3.2%	(2.1)%	1.1%

(a) Includes Mexico.

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Revenues by Region	Nine Months Ended September 30			Percentage Change from 2009 to 2010		
	2010	2009	Change	Price/ Volume	Currency	Total
(Dollars in millions)						
Western Europe	\$ 892.7	\$ 923.4	\$ (30.7)	(0.7)%	(2.6)%	(3.3)%
North America	826.1	823.0	3.1	(0.1)	0.5	0.4
Latin America (a)	212.5	134.9	77.6	46.4	11.1	57.5
Middle East and Africa	151.6	172.0	(20.4)	(14.7)	2.8	(11.9)
Asia-Pacific	114.7	78.6	36.1	32.6	13.3	45.9
Eastern Europe	83.7	86.2	(2.5)	(2.6)	(0.3)	(2.9)
Total Revenues	\$ 2,281.3	\$ 2,218.1	\$ 63.2	2.4%	0.5%	2.9%

(a) Includes Mexico.

Operating income from continuing operations for the third quarter and first nine months of 2010 was \$44.1 million and \$134.2 million, respectively, compared with \$56.4 million and \$164.0 million, respectively, for the same periods in 2009. The decrease in operating income was driven by the depressed non-residential construction market and pricing pressures for the first nine months of 2010 in the Harsco Infrastructure Segment. This was partially offset by increased steel production at customer sites in the Harsco Metals Segment and increased shipments in the Harsco Rail Segment coupled with benefits from restructuring actions and countermeasures implemented over the past two years throughout the Company. Diluted earnings per share from continuing operations for the third quarter of 2010 were \$0.26 compared with \$0.40 for the third quarter of 2009. For the first nine months of 2010, diluted earnings per share from continuing operations were \$0.76 compared with \$1.17 in the first nine months of 2009.

Third quarter 2009 results also included a net non-cash charge of \$0.11 per share in the Metals Segment for adjustments to correct errors generated principally by the improper recognition of certain revenues and the delayed recognition of certain expenses by one subsidiary, in one country, during the prior three years.

The Company continues to have significant available liquidity and remains well-positioned from a financial flexibility perspective. Net cash generated from operating activities was \$110.3 million for the three months ended September 30, 2010, compared with \$120.4 million in 2009. For the first nine months of 2010, the Company generated net cash from operating activities of \$236.0 million compared with \$276.7 million for the first nine months of 2009. Capital expenditures in 2010 were modestly higher than in 2009 as the Company continued to effectively utilize the mobility of its asset base to reduce new capital investments. In September 2010, the Company completed a \$250 million bond offering that bears interest at 2.7% and matures in October 2015. The net proceeds of this issuance were used to repay, in part, 200 million British pound sterling-denominated 7.25% notes (approximately \$316 million) that matured October 27, 2010. This additional debt at September 30, 2010 caused the Company's debt to capital ratio to increase to 43.3% at September 30, 2010 compared with 39.5% at December 31, 2009 (the lowest year-end ratio since 1998) and 38.5% at September 30, 2009. Additional commercial paper borrowings were made subsequent to September 30, 2010, to repay the remainder of the British pound sterling-denominated notes in excess of the proceeds from the 2010 bond issuance. Further information in regard to the Company's cash flows is discussed in the "Liquidity and Capital Resources" section.

## Segment Financial Highlights

Revenues	Three Months Ended September 30			Change	
	2010	2009	Change	Amount	Percent
(Dollars in millions)					
Harsco Infrastructure	\$ 253.6	\$ 279.5	\$ (25.9)	(9.3)%	
Harsco Metals	313.2	275.1	38.1	13.8	
Harsco Rail	70.7	77.2	(6.5)	(8.4)	
All Other Category	114.9	112.4	2.5	2.2	

Total Revenues	\$ 752.4	100.0%	\$ 744.2	100.0%	\$ 8.2	1.1%
<b>Operating Income (Loss)</b>						
	Three Months Ended September 30				Change	
(Dollars in millions)	2010		2009		Amount	Percent
Harsco Infrastructure	\$ (13.6)	(30.8)%	\$ 22.5	40.0%	\$ (36.1)	(160.4)%
Harsco Metals	19.4	44.0	(4.4)	(7.8)	23.8	540.9
Harsco Rail	14.4	32.7	14.8	26.2	(0.4)	(2.7)
All Other Category	24.9	56.4	24.8	43.9	0.1	0.4
Corporate	(1.0)	(2.3)	(1.3)	(2.3)	0.3	23.1
Total Operating Income	\$ 44.1	100.0%	\$ 56.4	100.0%	\$ (12.3)	(21.8)%

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	Three Months Ended September 30					
<b>Operating Margins</b>	2010		2009			
Harsco Infrastructure	(5.4)%				8.1%	
Harsco Metals	6.2				(1.6)	
Harsco Rail	20.4				19.1	
All Other Category	21.7				22.1	
Consolidated Operating Margin	5.9%				7.6%	

	Nine Months Ended September 30				Change	
(Dollars in millions)	2010		2009		Amount	Percent
Harsco Infrastructure	\$ 766.9	33.6%	\$ 872.0	39.3%	\$ (105.1)	(12.1)%
Harsco Metals	927.1	40.6	773.0	34.9	154.1	19.9
Harsco Rail	252.4	11.1	231.4	10.4	21.0	9.1
All Other Category	334.8	14.7	341.6	15.4	(6.8)	(2.0)
Corporate	0.1	—	0.1	—	—	—
Total Revenues	\$ 2,281.3	100.0%	\$ 2,218.1	100.0%	\$ 63.2	2.9%

<b>Operating Income (Loss)</b>						
	Nine Months Ended September 30				Change	
(Dollars in millions)	2010		2009		Amount	Percent
Harsco Infrastructure	\$ (46.5)	(34.6)%	\$ 66.3	40.4%	\$ (112.8)	(170.1)%
Harsco Metals	55.7	41.5	(3.0)	(1.8)	58.7	1,956.7
Harsco Rail	56.4	42.0	44.0	26.8	12.4	28.2
All Other Category	70.8	52.7	61.7	37.6	9.1	14.7
Corporate	(2.2)	(1.6)	(5.0)	(3.0)	2.8	56.0
Total Operating Income	\$ 134.2	100.0%	\$ 164.0	100.0%	\$ (29.8)	(18.2)%

	Nine Months Ended September 30					
<b>Operating Margins</b>	2010		2009			
Harsco Infrastructure	(6.1)%				7.6%	
Harsco Metals	6.0				(0.4)	
Harsco Rail	22.4				19.0	
All Other Category	21.1				18.1	
Consolidated Operating Margin	5.9%				7.4%	

**Harsco Infrastructure Segment:**

The Harsco Infrastructure Segment generated lower revenue and operating income in the third quarter and first nine months of 2010 compared with 2009, due principally to lower end-market demand driven by greatly reduced commercial and multi-family construction activity in the United States, the United Arab Emirates and across Europe, coupled with significant pricing pressures. In addition, the lack of available credit to certain customers has resulted in delayed non-residential construction projects.

	Three Months Ended September 30	Nine Months Ended September 30
<b>Significant Effects on Revenues (In millions)</b>		
Revenues — 2009	\$ 279.5	\$ 872.0
Net decreased price and volume	(34.9)	(155.7)
Acquisitions	20.9	61.0
Impact of foreign currency translation	(11.9)	(10.4)
Revenues — 2010	\$ 253.6	\$ 766.9

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**Significant Effects on Operating Income:**

- In the third quarter and first nine months of 2010, the Segment's operating results decreased due to reduced, deferred or cancelled non-residential, commercial and infrastructure construction spending, exacerbated by ongoing pricing pressures in all major markets globally and lower equipment

- utilization rates.
- In response to further deterioration of global infrastructure markets during the first nine months of 2010, this Segment continues to implement additional countermeasures targeting expense reduction, asset optimization and facility rationalization.
- Restructuring costs primarily relating to severance and exit-related costs during the third quarter and first nine months of 2010 were \$1.7 million and \$11.5 million, respectively. These were offset by a combination of property gains of \$0.6 million during the third quarter of 2010 and \$3.3 million for the first nine months of 2010 and contingent consideration adjustments of \$1.0 million during the third quarter of 2010 and \$10.6 million during the first nine months of 2010. See Note F, "Acquisitions," in Part I, Item 1, Financial Statements for additional information on the contingent consideration adjustments.
- Foreign currency translation in the third quarter and first nine months of 2010 decreased operating income for this Segment by \$0.4 million and \$1.1 million, respectively, compared with the third quarter and first nine months of 2009.

The Company anticipates that a comprehensive restructuring plan for the Harsco Infrastructure Segment will be developed, approved and announced in the fourth quarter of 2010. The plan is being developed to further streamline and reduce the cost base in this business to better align it to expected near-term end-market conditions and could materially impact the fourth quarter 2010 results. In October 2010, a plan to rationalize certain North America products was approved. This will result in the disposal of rental assets and reduce pre-tax income by approximately \$9 million (net of scrap or sale proceeds) in the fourth quarter of 2010.

#### **Harsco Metals Segment:**

The Harsco Metals Segment generated higher revenues, operating income and margins in the third quarter and first nine months of 2010 compared with 2009 due principally to the increased global steel production of its customers and the overall weaker U.S. dollar.

<b>Significant Impacts on Revenues (In millions)</b>	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Revenues — 2009	\$ 275.1	\$ 773.0
Net increased price and volume	32.0	126.7
Impact of foreign currency translation	(4.2)	17.1
Impact of 2009 out-of-period adjustment and other changes	10.3	10.3
Revenues — 2010	<u>\$ 313.2</u>	<u>\$ 927.1</u>

#### **Significant Effects on Operating Income:**

- Customers' production in 2010 increased approximately 9% and 28% compared with the third quarter and first nine months of 2009, respectively.
- During the third quarter and first nine months of 2010, this Segment's operating income benefited from cost reduction initiatives; from sustained benefits from previously implemented restructuring actions; and from additional countermeasures implemented throughout 2009 and 2010 which have targeted expense reduction, revenue enhancement and asset optimization.
- Steel production moderated in the third quarter of 2010 compared to the first half of 2010, and is expected to further moderate in the fourth quarter of 2010 as the restocking of steel inventories by service centers and end-customers returns to more historically normal levels.
- Foreign currency translation in the third quarter and first nine months of 2010 increased operating income for this Segment by \$1.3 million and \$2.8 million, respectively, compared with the third quarter and first nine months of 2009.
- The third quarter and first nine months of 2009 included an operating income decrease resulting from a reversal of revenue improperly recognized and delayed recognition of certain expenses over the prior three years. The improperly recorded revenue related to the failure to receive advance customer agreement and to invoice on a

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timely basis, for additional work performed for two customers; was isolated to a business unit in one country; and was considered a one-time event.

#### **Harsco Rail Segment:**

The Harsco Rail Segment generated higher revenues, operating income and margins in the first nine months of 2010 compared with 2009 due principally to shipments of orders to China and other parts of the world, coupled with cost reduction benefits as a result of continuous improvement initiatives.

<b>Significant Impacts on Revenues (In millions)</b>	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Revenues — 2009	\$ 77.2	\$ 231.4
Net increased (decreased) volume	(6.6)	19.8
Impact of foreign currency translation	0.1	1.2
Revenues — 2010	<u>\$ 70.7</u>	<u>\$ 252.4</u>

#### **Significant Effects on Operating Income:**

- This Segment's operating income for the third quarter of 2010 was relatively consistent with 2009, while the first nine months of 2010 increased substantially over 2009 due to shipments of equipment under existing contracts to China and other parts of the world, partially offset by lower grinding services and spare parts sales. Shipments in the fourth quarter of 2010 are expected to be less than previous quarters due to the scheduled timing of deliveries. This should result in significantly reduced revenue and operating income for this Segment in the fourth quarter of 2010. However, shipments to China are expected to resume in 2011 to approximate the revenue from China recorded in 2010 and global bidding activity is strong.
- During the third quarter and first nine months of 2010, this Segment's operating income and margins also benefited from ongoing implementation of continuous improvement initiatives.
- Foreign currency translation in 2010 decreased operating income for this Segment by \$0.1 million for the third quarter and had relatively no impact on operating income for the first nine months of 2010 compared with the respective periods of 2009.

## **All Other Category — Harsco Minerals & Harsco Industrial:**

The All Other Category (“Harsco Minerals & Harsco Industrial”) generated higher revenues and relatively consistent operating income leading to a slight decrease in operating margin in the third quarter compared with 2009. During the first nine months of 2010, the All Other Category generated lower revenues and increased operating income leading to a higher operating margin compared with 2009. The decrease in revenues for the first nine months of 2010 was primarily due to reduced market demand for certain industrial products. However, higher metals selling prices for Harsco Minerals partially offset the impact of these market conditions within the operating income results.

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<b>Significant Impacts on Revenues (In millions)</b>	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Revenues — 2009	\$ 112.4	\$ 341.6
Air-cooled heat exchangers	7.3	(22.7)
Industrial grating products	(6.8)	(17.7)
Roofing granules and abrasives	(3.1)	(0.3)
Minerals and recycling technologies	5.9	33.6
Impact of foreign currency translation	0.1	2.2
Other changes not individually discussed	(0.9)	(1.9)
Revenues — 2010	<u>\$ 114.9</u>	<u>\$ 334.8</u>

### **Significant Effects on Operating Income:**

- The air-cooled heat exchangers business experienced an increase in operating income in the third quarter, but an overall decrease during the first nine months of 2010 compared with 2009 due to reduced customer demand earlier in the year. There has been modest improvement in demand through the year within the natural gas industry.
- Operating income in the industrial grating products business decreased in 2010 due to lower demand stemming from the economic downturn as compared with the third quarter and first nine months of 2009, partially offset by lower raw material costs.
- Operating income for the minerals and recycling technologies business increased in the third quarter and first nine months of 2010 compared with 2009 due to significantly higher metal prices and higher customer demand.
- Countermeasures targeting expense reduction, revenue enhancement and asset optimization continue to be implemented in these businesses, positively contributing to operating income and operating margins in 2010.
- Certain commodity prices, which affect the Harsco Minerals business, have increased in comparison with last year and are expected to have a positive effect on fourth quarter 2010 results.
- Foreign currency translation did not have a significant effect on operating income for this category in the third quarter or first nine months of 2010 compared with the respective periods for 2009.

### **Outlook, Trends and Strategies**

Challenges experienced throughout 2010 in the Harsco Infrastructure Segment are expected to continue through the end of the year. Recovery is still not evident in many of the non-residential and commercial construction markets served by the Harsco Infrastructure Segment, as the global economic recession and market uncertainty have resulted in infrastructure project delays, scope reductions or cancellations. Austerity measures being implemented by governments and companies in Europe, particularly in the United Kingdom, coupled with increased competitive pricing pressures and lower equipment utilization rates are expected to continue to negatively impact the Harsco Infrastructure Segment’s operating results.

In the Harsco Metals Segment, global steel production in 2010 has recovered from record lows experienced in 2009, but third quarter 2010 activity moderated from the first half of the year. Steel production is expected to further moderate in the fourth quarter of 2010 as the restocking of steel inventories by service centers and end-customers returns to more historically normal levels. Certain commodity prices, which affect the Harsco Minerals business, have increased in comparison with last year and are expected to have a positive effect on fourth quarter 2010 results. The timing of rail equipment deliveries in the Harsco Rail Segment, which were accelerated into the first six months of 2010 at the request of a major customer, is expected to result in lower operating income for the Harsco Rail Segment in the fourth quarter of 2010. However, shipments are expected to resume at previous annual levels in 2011.

Despite a level of uncertainty remaining in global economic conditions, especially in the Harsco Infrastructure Segment, the Company believes it continues to be well-positioned to capitalize on opportunities in the near to long-term based on its strong balance sheet, available liquidity and ability to generate strong operating cash flows, as well as its demonstrated ability to execute appropriate countermeasures. Countermeasures such as ongoing cost-reduction initiatives; the Company’s globally integrated enterprise initiative (“One Harsco”); and the Company’s continuous improvement program have significantly reduced, and should continue to reduce, the Company’s cost structure and further enhance its financial strength without sacrificing quality of output. The Company’s expansion of its global footprint in targeted growth markets;

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its diversity of services and products in industries that are fundamental to global growth; its long-term mill services and minerals supply contracts; the portability and mobility of its infrastructure services equipment; and its large infrastructure services customer base help mitigate the Company’s overall long-term exposure to changes in the economic outlook in any single economy. However, any further deterioration of global economies could still have an adverse impact on the Company’s operating results.

Additionally, the following significant items, risks, trends and strategies are expected to affect the Company for the fourth quarter of 2010 and beyond:

- The near-term outlook for the Harsco Infrastructure Segment is impacted by a continued lack of meaningful activity in non-residential, commercial and multifamily construction markets, particularly in Europe, the Gulf Region of the Middle East and the United States. This lack of activity is expected to continue to present challenging business conditions for this Segment. The Company expects the Harsco Infrastructure Segment to incur an operating loss in the fourth quarter of 2010 that will approximate or exceed the third quarter 2010 operating loss.
- The Company anticipates that a comprehensive restructuring plan will be developed, approved and announced in the fourth quarter of 2010 with resulting cost reductions that should benefit the operating results for 2011 and beyond in the Harsco Infrastructure Segment. The plan is being developed to further streamline and reduce the cost base in this business to better align it to expected near-term end-market conditions and could materially impact the fourth quarter 2010 results. In October 2010, a plan to rationalize certain North America products was approved. This will result in the disposal of rental assets and reduce pre-tax income by approximately \$9 million (net of scrap or sale proceeds) in the fourth quarter of 2010. The Company's annual goodwill impairment testing will be completed during the fourth quarter of 2010. Should the Company experience a further degradation in the overall markets served by the Harsco Infrastructure Segment, impairment losses for assets associated with this Segment may be required. Any necessary impairment could result in the write down of the carrying value of goodwill to its implied fair value.
- The Company has initiated strategies to reposition the Harsco Infrastructure business and is focusing increasingly on projects in the global industrial maintenance and infrastructure construction sectors; developing this business in economies outside the U.S. and Europe that have greater prospects for both near-term and long-term growth; and reducing the branch structure which will result in cost savings realized mostly in 2011 and beyond.
- The Company anticipates that tightening environmental regulations will compel customers to address their production waste streams as an opportunity to maximize environmental compliance. This should provide additional revenue opportunities for the Harsco Metals Segment and for the Harsco Minerals businesses in the All Other Category. The Company will continue to pursue growth opportunities in environmental services as increasing regulatory and public demand for environmental solutions creates additional outsourced opportunities in slag management.
- The Harsco Rail Segment has a strong backlog for 2011 due principally to ongoing production of rail grinding machines under existing orders.
- International demand for railway track maintenance services, solutions and equipment is expected to be strong in both the near-term and the long-term. The Harsco Rail Segment expects to develop a larger presence in certain developing countries as track construction and maintenance needs grow. Global bidding activity has been strong.
- In the Harsco Minerals businesses in the All Other Category, improved customer production levels comparable with the prior year should have an overall positive effect on certain reclamation and recycling services in the near-term.
- Also in the All Other Category, the air-cooled heat exchangers business continues to explore international opportunities in addition to further growth in its customary North American markets. Increased industrial use due to improving economic conditions will influence the price and demand for natural gas and, consequently, the demand for heat exchanger equipment. Weather trends can also impact this business as demand for heat exchanger equipment tends to increase in colder weather and decrease in warmer weather.
- The Company announced in January 2010 that it has embarked upon a business transformation initiative designed to create significant operating and cost efficiencies by improving the Company's internal supply chain planning, logistics, scheduling and integration throughout its worldwide operations. This project is expected to contribute to the Company's Economic Value Added ("EVA®") growth. Although there will be implementation expenses and capital expenditures, in each year of implementation the benefits are expected to exceed the costs.
- The Company's actuarial assumptions used to determine net periodic pension cost for defined benefit pension plans are established at December 31 each year. Currently, a low global interest rate environment indicates that discount rates at December 31, 2010, could be lower than the global weighted average of 6.1% used for establishing net periodic pension cost for 2010. A lower discount rate would generally result in an increased pension liability and higher net periodic pension cost. This could be partially offset by returns on pension plan assets higher than those previously assumed. Should the interest rate environment and discount rates remain at a lower level at December 31, 2010, to the extent that the resulting effects are not offset by higher returns on pension plan assets, the Company expects that net periodic pension cost for 2011 will be higher than in 2010.
- The Company will continue to place a strong focus on corporate-wide expansion into targeted growth markets to grow and better balance its geographic footprint. More specifically, the Company's global growth strategies include steady, targeted expansion, particularly in the Gulf Region of the Middle East and Africa, Asia-Pacific and Latin America to further complement the Company's already-strong presence throughout Europe and North America. Growth is also expected to be achieved through the provision of additional services to existing customers; new contracts in both developed and targeted growth markets; and targeted, strategic acquisitions in strategic countries and market sectors. Additionally, new higher-margin service and sales opportunities in the Harsco Minerals and Harsco Rail businesses are being pursued globally. This strategy is expected to develop a significant increase to the Company's presence in these markets to achieve approximately 30% of total Company revenues from targeted growth markets over the near-

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term and closer to 40% in the longer-term. Over time, the improved geographic footprint will also benefit the Company through further diversification of its customer base.

- The Company expects continued strong cash flows from operating activities, although 2010 will be less than 2009. The Company also expects to maintain discipline to limit capital expenditures through its ability to redeploy equipment to new projects, without jeopardizing growth opportunities. The Company believes that, in the current economic environment, the mobile nature of its capital investment pool will facilitate strategic growth initiatives in the near-term, lessening the need for growth capital expenditures, particularly for the Harsco Infrastructure business. New or renewed contracts in the Harsco Metals Segment, or the Minerals business, may require higher incremental capital investments. Geographic expansion in all businesses may also require higher capital investments.
- Management will continue to be very selective and disciplined in allocating capital, choosing projects with the highest EVA potential.
- Fluctuations in the U.S. dollar can have significant impacts in the Harsco Infrastructure and Harsco Metals Segments, as approximately 80% to 85% of the revenues generated in these businesses are outside the United States. If the U.S. dollar weakens sales and operating income would generally improve. If the U.S. dollar were to strengthen, sales and operating income would generally be reduced.
- Volatility in energy and commodity costs (e.g., diesel fuel, natural gas, steel, etc.) and worldwide demand for these commodities could impact the Company's operations, both in cost increases or decreases to the extent that such increases or decreases are not passed on to customers. However, volatility in energy and commodity costs may provide additional service opportunities for the Harsco Metals Segment and several businesses in the All Other Category as customers may outsource more services to reduce overall costs. Volatility may also affect opportunities in the Harsco Infrastructure Segment for additional industrial plant maintenance and capital improvement projects.
- The Company has maintained a capital structure with a balance sheet debt to capital ratio approximating 40% for the last several years. That ratio increased to 43.3% at September 30, 2010 as a result of the Company's completion of a \$250 million bond offering in September 2010. The net proceeds of this issuance were used to repay, in part, 200 million British pound sterling-denominated notes (approximately \$316 million) that matured October 27, 2010. Additional commercial paper borrowings were made to repay the remainder of the British pound sterling-denominated notes in excess of the proceeds from the 2010 bond issuance. The debt to capital ratio declined following the repayment of the pound sterling notes.



Currently, a majority of the Company's revenue is generated from customers located outside the United States, and a substantial portion of the Company's assets and employees are located outside the United States. U.S. income tax and foreign withholding taxes have not been provided on undistributed earnings for certain non-U.S. subsidiaries, because such earnings are intended to be indefinitely reinvested in the operations of those subsidiaries. Several U.S. legislative proposals have been announced that would have the effect of substantially reducing the Company's ability to defer U.S. taxes on profit permanently reinvested outside the United States. Proposals to date, if enacted, could have a negative impact on the Company's financial position and operating results. Additionally, they could have a negative impact on the Company's ability to compete in the global marketplace. The probability of any of these proposals being enacted cannot be predicted with any certainty. The Company is working with legislators, trade groups and manufacturing groups with the goal of achieving a balanced and fair approach to tax reform, regardless of when reform occurs. The Company continues to monitor legislation to be in position to structure operations in a manner that will reduce the impact of enacted changes.

The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act became law during the first quarter of 2010. These new laws will have an impact on the Company's future costs for providing health care benefits to its employees when the laws begin to impact the Company in 2013 and beyond. The Company determined that the impact of the new laws on postretirement medical plans will be immaterial to its financial position, results of operations and cash flows. The Company is assessing the extent to which the new laws will affect its future health care and related employee benefit plan costs for active employees.

The Harsco Minerals business generates value by collecting and processing boiler slag, a coal combustion by-product ("CCP") into commercially useful products that put this material to beneficial use such as roofing materials or blasting abrasives. In May 2010, the Environmental Protection Agency ("EPA") released a proposed rule that set out two different options with regard to the regulation of CCPs produced by coal-fired utility boilers. One option would regulate CCPs as hazardous waste when the CCPs are destined for disposal in landfills and surface impoundments. The second option would regulate the disposal of CCPs as solid waste by issuing minimum national criteria for proper management of these nonhazardous, solid wastes. Neither proposal changes the EPA's prior determination that beneficially used CCPs, including the Company's products, are exempt from the hazardous waste regulations. The adoption, terms and timing of any new regulation controlling disposal of CCPs remain uncertain, however, and there can be no assurance that any CCP regulation will continue to provide for an exemption for beneficial use of CCPs. The Company will continue to closely monitor the EPA's proposal and file public comments as appropriate.

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**Results of Operations**

(Dollars are in millions, except per share amounts)	Three Months Ended September 30			
	2010	2009	Change	
			Amount	%
Revenues from continuing operations	\$ 752.4	\$ 744.2	\$ 8.2	1.1
Cost of services and products sold	574.8	554.6	20.2	3.6
Selling, general and administrative expenses	131.4	125.4	6.0	4.8
Other expense	0.9	6.9	(6.0)	(87.2)
Operating income from continuing operations	44.1	56.4	(12.3)	(21.9)
Interest expense	15.7	15.8	(0.1)	(0.7)
Income tax expense from continuing operations	7.4	6.5	0.9	13.3
Income from continuing operations	21.8	35.1	(13.3)	(37.8)
Loss from discontinued operations	0.9	11.8	10.9	92.4
Net income attributable to Harsco Corporation	20.2	20.2	—	—
Diluted earnings per common share from continuing operations				
attributable to Harsco Corporation common stockholders	0.26	0.40	(0.14)	(35.0)
Diluted earnings per common share attributable to Harsco Corporation common stockholders	0.25	0.25	—	—
Effective income tax rate for continuing operations	25.4%	15.7%		

(Dollars are in millions, except per share amounts)	Nine Months Ended September 30			
	2010	2009	Change	
			Amount	%
Revenues from continuing operations	\$ 2,281.3	\$ 2,218.1	\$ 63.2	2.9
Cost of services and products sold	1,744.7	1,664.1	80.6	4.8
Selling, general and administrative expenses	401.5	381.4	20.1	5.3
Other (income) expense	(2.0)	6.4	(8.4)	(131.4)
Operating income from continuing operations	134.2	164.0	(29.8)	(18.2)
Interest expense	47.2	46.6	0.6	1.3
Income tax expense from continuing operations	23.3	20.5	2.8	13.6
Income from continuing operations	65.8	99.0	(33.2)	(33.6)
Loss from discontinued operations	3.5	14.5	11.0	76.0
Net income attributable to Harsco Corporation	57.9	79.4	(21.5)	(27.1)
Diluted earnings per common share from continuing operations				
attributable to Harsco Corporation common stockholders	0.76	1.17	(0.41)	(35.0)
Diluted earnings per common share attributable to Harsco Corporation common stockholders	0.72	0.99	(0.27)	(27.3)
Effective income tax rate for continuing operations	26.2%	17.2%		

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**Comparative Analysis of Consolidated Results**

## Revenues

The change in revenues for the third quarter and first nine months of 2010 from the third quarter and first nine months of 2009 was attributable to the following significant items:

<b>Change in Revenues — 2010 vs. 2009</b> (In millions)	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Net increased volumes in the Harsco Metals Segment due principally to increased steel production by the Company's customers.	\$ 42.3	\$ 137.0
Effect of business acquisitions in the Harsco Infrastructure Segment.	20.9	61.0
Net increased revenues in the reclamation and recycling services business due to higher commodity pricing and increased volume.	5.9	33.6
Net changes in revenues in the Harsco Rail Segment due principally to the timing of and an overall higher level of rail equipment shipments to China in 2010.	(6.6)	19.8
Effect of foreign currency translation.	(15.9)	10.1
Lower volume in the roofing granules and abrasives business.	(3.1)	(0.3)
Decreased revenues of industrial grating products from reduced demand coupled with lower pricing levels.	(6.8)	(17.7)
Net reduced demand for air-cooled heat exchangers due to a weaker natural gas market in the first half of 2010, with improvement in the third quarter of 2010.	7.3	(22.7)
Net decreased revenues in the Harsco Infrastructure Segment due to lower rentals and sales and reduced pricing, principally due to lower activity levels and project deferrals, postponements and cancellations of non-residential construction activity globally as a result of economic decline.	(34.9)	(155.7)
Other (minor changes across the various units not already mentioned).	(0.9)	(1.9)
<b>Total Change in Revenues — 2010 vs. 2009</b>	<b>\$ 8.2</b>	<b>\$ 63.2</b>

## Cost of Services and Products Sold

The change in cost of services and products sold for the third quarter and first nine months of 2010 from the third quarter and first nine months of 2009 was attributable to the following significant items:

<b>Change in Cost of Services and Products Sold — 2010 vs. 2009</b> (In millions)	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Effect of business acquisitions	\$ 11.8	\$ 44.8
Increased costs due to changes in revenues coupled with lower high-margin rentals in the Harsco Infrastructure Segment (exclusive of the effect of foreign currency translation and business acquisitions, and including the impact of increased commodity and energy costs included in selling prices).	16.1	24.3
Effect of foreign currency translation.	(13.2)	6.2
Other, net (due primarily to product mix).	5.5	5.3
<b>Total Change in Cost of Services and Products Sold — 2010 vs. 2009</b>	<b>\$ 20.2</b>	<b>\$ 80.6</b>

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## Selling, General and Administrative Expenses

The change in selling, general and administrative expenses for the third quarter and first nine months of 2010 from the third quarter and first nine months of 2009 was attributable to the following significant items:

<b>Change in Selling, General and Administrative Expenses — 2010 vs. 2009</b> (In millions)	<b>Three Months Ended September 30</b>	<b>Nine Months Ended September 30</b>
Effect of business acquisitions.	\$ 10.3	\$ 18.7
Higher professional fees due to globally integrated enterprise initiatives.	0.5	3.6
Effect of foreign currency translation.	(3.8)	0.2
Lower bad debt expense.	(0.2)	(4.1)
Other, net.	(0.8)	1.7
<b>Total Change in Selling, General and Administrative Expenses — 2010 vs. 2009</b>	<b>\$ 6.0</b>	<b>\$ 20.1</b>

## Other (Income) Expense

This income statement classification includes restructuring costs for employee termination benefits and costs to exit activities; impaired asset write-downs; net gains or losses on the disposal of non-core assets; and business combination accounting adjustments related to recent acquisitions by the Company.

<b>(In thousands)</b>	<b>Three Months Ended September 30</b>		<b>Nine Months Ended September 30</b>	
	2010	2009	2010	2009
Restructuring costs	\$ 2,089	\$ 7,199	\$ 14,494	\$ 12,387
Gains from sale of non-core assets	(758)	(969)	(6,612)	(6,754)

Contingent consideration adjustments	(989)	—	(10,620)	—
Other	541	668	718	794
Other (income) expense	\$ 883	\$ 6,898	\$ (2,020)	\$ 6,427

For the three months and nine months ended September 30, 2010, restructuring costs were incurred principally in the Harsco Infrastructure Segment.

### Interest Expense

This decrease of \$0.1 million and increase of \$0.6 million in the third quarter and first nine months of 2010, respectively, compared with 2009 reflects positive effects from foreign currency translation in the third quarter of 2010, as well as slightly higher overall debt levels in 2010 due to recent acquisitions.

### Income Tax Expense from Continuing Operations

This increase was due to lower earnings from continuing operations in jurisdictions with lower tax rates and a consequential increase in the effective income tax rate from continuing operations. The effective income tax rate relating to continuing operations for the third quarter of 2010 was 25.4% compared with 15.7% for the third quarter of 2009. For the first nine months of 2010 the effective income tax rate relating to continuing operations was 26.2% compared with 17.2% for the first nine months of 2009. The effective income tax rate for the first nine months of 2009 reflected net discrete tax benefits recognized in the first quarter of 2009 related to a change in the permanent reinvestment of prior-year undistributed earnings.

### Income from Continuing Operations

This decrease resulted from lower rentals and sales in the Harsco Infrastructure Segment due to decreased global construction activity; partially offset by increased volume in the Harsco Metals Segment resulting from increased steel production, and net changes in revenues in the Harsco Rail Segment due principally to the timing of and an overall higher level of rail equipment shipments to China in 2010.

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### Loss from Discontinued Operations

The loss from discontinued operations was \$0.9 million and \$3.5 million in the third quarter and first nine months of 2010, respectively, compared with losses of \$11.8 million and \$14.5 million in the third quarter and first nine months of 2009, respectively. Discontinued operations consisted of the Company's Gas Technologies Segment, the sale of which was completed in December 2007. The loss incurred in 2010 includes a pre-tax charge of \$5.0 million related to potential and contingent claims, as more fully described in Note H, "Commitments and Contingencies," in the accompanying Notes to the Condensed Consolidated Financial Statements. The loss in 2009 was due to the resolution of open claims and counterclaims that had been submitted to arbitration related to the disposition of the Gas Technologies Segment, coupled with the tax effect from the final purchase price allocation.

### Liquidity and Capital Resources

#### Overview

Global financial markets, which have been under stress since 2008 due to poor financial institution lending and investment practices and sharp declines in real estate values, have improved for certain highly rated credit issuers. However, tightened credit conditions for the funding of non-residential construction projects, particularly commercial construction, along with the sovereign debt crisis in Europe and the Middle East and recent economic austerity measures implemented in the United Kingdom have restrained growth in the Harsco Infrastructure Segment. These unfavorable conditions in the credit markets continue to affect some of the Company's current and potential customers. In response to these changes in global economic conditions, the Company continues to implement capital efficiency initiatives to enhance liquidity including the following: prudently reducing capital spending to only critical projects where the highest returns can be achieved while redeploying existing capital investments; optimizing worldwide cash positions; reducing or eliminating discretionary spending; and frequent evaluation of customer and business-partner credit risk.

Despite the global financial market environment, the Company continues to have sufficient available liquidity and has been able to obtain any necessary financing. On September 20, 2010, the Company successfully issued \$250 million 5-year notes bearing interest at 2.7%. The proceeds of this offering were used to repay, in part, 200 million British pound sterling-denominated notes (approximately \$316 million) that matured October 27, 2010. Additional commercial paper borrowings were made to repay the remainder of the British pound sterling-denominated notes in excess of the proceeds of the 2010 bond issuance. The Company currently expects operational and business needs to be covered by cash from operations for the remainder of 2010 and beyond. During the first nine months of 2010, the Company generated \$236.0 million in operating cash, a decrease from the \$276.7 million generated in the first nine months of 2009. The results in 2010 compared with 2009 reflect lower levels of income generated by the Harsco Infrastructure Segment as a result of the ongoing global economic situation.

In the first nine months of 2010, the Company invested \$129.9 million in capital expenditures (46% of which were for revenue-growth projects), compared to the \$123.1 million invested in the first nine months of 2009, and paid \$49.5 million in stockholder dividends compared with \$47.8 million paid in the first nine months of 2009.

The Company's net cash borrowings increased \$196.7 million in the first nine months of 2010 due to the September bond issuance of \$250 million. Balance sheet debt, which is affected by foreign currency translation, increased \$190.4 million from December 31, 2009. The debt to total capital ratio increased from 39.5% at December 31, 2009 (the lowest year-end ratio since 1998) to 43.3% at September 30, 2010. The September 30, 2010 ratio was higher than the 38.5% ratio at September 30, 2009 due to the September 2010 bond issuance.

Despite the ongoing global economic conditions, the Company expects to generate strong operating cash flows for 2010, although at a level less than in 2009. The Company plans to sustain its balanced portfolio through its strategy of redeploying discretionary cash: for disciplined organic growth and international or market-segment diversification; for strategic acquisitions, but not until 2011 or later; for growth in long-term, high-return and high-renewal-

rate services contracts for the Harsco Metals Segment, principally in targeted growth markets or for customer diversification; and for organic growth and international diversification in the All Other Category (Harsco Minerals & Harsco Industrial) through strategic alliances or joint ventures. The Company also foresees continuing its long and consistent history of paying dividends to stockholders.

The Company continues its focus on improving working capital management. Globally integrated enterprise initiatives are being used to continue to further improve the effective and efficient use of working capital, particularly accounts receivable and inventories in the Harsco Infrastructure, Harsco Metals and Harsco Rail Segments.

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**Sources and Uses of Cash**

The Company's principal sources of liquidity are cash from operations and borrowings under its various credit agreements, augmented periodically by cash proceeds from non-core asset sales. The primary drivers of the Company's cash flow from operations are the Company's sales and income. The Company's long-term Harsco Metals contracts, in addition to the backlog of certain equipment orders and the long-term nature of certain service contracts within the Harsco Rail Segment, provide predictable cash flows for several years into the future. (See the "Certainty of Cash Flows" section for additional information on estimated future revenues of Harsco Metals and Harsco Rail contracts and order backlogs for the Company's manufacturing businesses.) Cash returns on capital investments made in prior years, for which no cash is currently required, are a significant source of cash from operations. Depreciation expense related to these investments is a non-cash charge. The Company also continues to maintain working capital at a manageable level based upon the requirements and seasonality of the businesses.

Major uses of operating cash flows and borrowed funds include: capital investments, principally in the Harsco Metals and Harsco Infrastructure Segments; payroll costs and related benefits; dividend payments; pension funding payments; inventory purchases for the manufacturing businesses; income tax payments; debt principal and interest payments; insurance premiums and payments of self-insured casualty losses; and machinery, equipment, automobile and facility rental payments. Cash is also used for targeted, strategic acquisitions as the appropriate opportunities arise.

**Resources available for cash requirements** — The Company meets its ongoing cash requirements for operations and growth initiatives by utilizing cash from operations, by accessing the public debt markets and by borrowing from banks. Public markets in the United States and Europe are accessed through the Company's commercial paper programs and through discrete-term note issuance to investors. Various bank credit facilities are available throughout the world. On September 20, 2010, the Company successfully issued \$250 million 5-year notes bearing interest at 2.7%. The proceeds of this offering were used to repay, in part, 200 million British pound sterling-denominated notes (approximately \$316 million) that matured October 27, 2010. Additional commercial paper borrowings were made to repay the remainder of the British pound sterling-denominated notes in excess of the proceeds of the 2010 bond issuance. The Company expects to utilize public debt markets, bank facilities and cash from operations to meet its cash requirements in the future.

The following table details the amounts outstanding under credit facilities and commercial paper programs and available credit at September 30, 2010:

Summary of Credit Facilities and Commercial Paper Programs  (In millions)	September 30, 2010		
	Facility Limit	Outstanding Balance	Available Credit
U.S. commercial paper program	\$ 550.0	\$ —	\$ 550.0
Euro commercial paper program	272.6	—	272.6
Multi-year revolving credit facility (a)	570.0	—	570.0
Bilateral credit facility (b)	30.0	—	30.0
<b>Totals at September 30, 2010</b>	<b>\$ 1,422.6</b>	<b>\$ —</b>	<b>\$ 1,422.6(c)</b>

(a) U.S.-based program.

(b) International-based program.

(c) Although the Company has significant available credit, for practical purposes, the Company limits aggregate commercial paper and credit facility borrowings at any one-time to a maximum of \$600 million (the aggregate amount of the back-up facilities).

For more information on the Company's credit facilities and long-term notes, see Note 6, "Debt and Credit Agreements," to the Company's Form 10-K for the year ended December 31, 2009.

**Credit Ratings and Outlook** — The following table summarizes the Company's debt credit ratings at September 30, 2010:

	Long-term Notes	U.S.-Based Commercial Paper	Outlook
Standard & Poor's (S&P)	A-	A-2	Negative
Moody's	Baa1	P-2	Negative
Fitch	A-	F2	Stable

The Company's euro-based commercial paper program has not been rated since the euro market does not require it. In September 2010, Standard & Poor's, Moody's and Fitch reaffirmed the Company's credit ratings. A downgrade to the Company's credit ratings may increase borrowing costs to the Company, while an improvement in the Company's credit ratings may decrease borrowing costs to the Company. Additionally, a downgrade in the Company's credit ratings may result in reduced access to credit markets.

**Working Capital Position** — Changes in the Company's working capital are reflected in the following table:

(Dollars are in millions)	September 30 2010	December 31 2009	Increase (Decrease)
<b>Current Assets</b>			
Cash and cash equivalents	\$ 330.3	\$ 94.2	\$ 236.1
Trade accounts receivable, net	657.9	598.3	59.6
Other receivables, net	28.8	30.9	(2.1)
Inventories	278.9	291.2	(12.3)
Other current assets	163.8	154.7	9.1
Total current assets	<u>1,459.8(a)</u>	<u>1,169.3</u>	<u>290.5(a)</u>
<b>Current Liabilities</b>			
Notes payable and current maturities	324.8	83.2	241.6
Accounts payable	237.3	215.5	21.8
Accrued compensation	84.0	67.7	16.3
Income taxes payable	26.7	5.9	20.8
Other current liabilities	352.3	378.8	(26.5)
Total current liabilities	<u>1,025.0(a)</u>	<u>751.1</u>	<u>273.9(a)</u>
<b>Working Capital</b>	<u>\$ 434.8</u>	<u>\$ 418.2</u>	<u>\$ 16.6</u>
<b>Current Ratio (b)</b>	<u>1.4:1</u>	<u>1.6:1</u>	

(a) Does not total due to rounding.

(b) Calculated as Current assets/Current liabilities.

Working capital increased 4% in the first nine months of 2010 due principally to the following factors:

- Cash increased \$236.1 million primarily due to the cash proceeds from the September 2010 \$250 million bond offering.
- Net trade accounts receivable increased \$59.6 million primarily due to higher sales levels, partially offset by foreign currency translation effects.
- Other current liabilities decreased \$26.5 million due principally to a decrease in customer advance payments in the Harsco Rail Segment as equipment was shipped to customers and the advances were applied to customer accounts, partially offset by an increase in other current liabilities.

These factors were partially offset by the following:

- Notes payable and current maturities increased \$241.6 million due to the reclassification of the Company's 200 million British pound sterling-denominated notes to a current liability, partially offset by the repayment of commercial paper borrowings.
- Accounts payable and accrued compensation increased \$38.2 million primarily due to increased business activity in the Harsco Metals Segment.
- Income taxes payable increased \$20.8 million due to the overall timing of income tax accruals and payments.
- Inventories decreased \$12.3 million primarily due to the Company's focus on reducing inventory levels based upon current market demand as well as foreign currency translation effects.

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**Certainty of Cash Flows** — The certainty of the Company's future cash flows is underpinned by the long-term nature of the Company's metals services contracts, the order backlog for the Company's railway track maintenance services and equipment, and the strong discretionary cash flows (operating cash flows in excess of the amounts necessary for capital expenditures to maintain current revenue levels) generated by the Company. Historically, the Company has utilized these discretionary cash flows for growth-related capital expenditures, strategic acquisitions and for debt repayment. As the Company has demonstrated since the end of 2008, it has the ability to substantially reduce its capital expenditures due to the mobility of its existing capital investment base. The existing base can be redeployed for use in growth projects, thus limiting the need for new investment. The Company has continued to grow in countries with increased demand through prudent redeployment of its existing equipment.

The types of products and services that the Company provides are not subject to rapid technological change, which increases the stability of related cash flows. Additionally, it is believed by the Company that each of the businesses in its balanced portfolio are among the leaders in the industries the Company serves. Due to these factors, the Company is confident in its future ability to generate positive cash flows from operations.

## **Cash Flow Summary**

The Company's cash flows from operating, investing and financing activities, as reflected in the Consolidated Statements of Cash Flows, are summarized in the following table:

### **Summarized Cash Flow Information**

(In millions)	Nine Months Ended September 30	
	2010	2009

Net cash provided by (used in):		
Operating activities	\$ 236.0	\$ 276.7
Investing activities	(142.3)	(127.3)
Financing activities	142.0	(145.6)
Effect of exchange rate changes on cash	0.5	2.5
Net change in cash and cash equivalents	\$ 236.2	\$ 6.4(a)

(a) Does not total due to rounding.

**Cash From Operating Activities** — Net cash provided by operating activities in the first nine months of 2010 was \$236.0 million, a decrease of \$40.7 million from the first nine months of 2009. The decrease resulted primarily from the following:

- The timing of net trade receivable collections due to the timing of sales in the Harsco Metals, Harsco Rail, and Harsco Minerals Segments;
- Reduction in customer advance payments on contracts due to shipments of equipment by the Harsco Rail Segment in 2010; and
- Lower net income in 2010 as compared with 2009 primarily attributable to the Harsco Infrastructure Segment.

These decreases were partially offset by the following:

- The timing of payments and increased business activity year over year that resulted in higher accounts payable levels in 2010; and
- Lower incentive compensation payments in 2010 compared with 2009 due to lower earned incentive compensation.

**Cash Used in Investing Activities** — In the first nine months of 2010, cash used in investing activities was \$142.3 million consisting primarily of capital investments of \$129.9 million and \$27.6 million used for strategic acquisitions. Capital investments increased \$6.9 million compared with the first nine months of 2009, as the Company continues to efficiently use capital and enhance liquidity through prudent reduction of capital investments. Growth capital constituted 46% of investments made in the first nine months of 2010, with investments made predominantly in the Harsco Metals Segment and, to a lesser extent, the Harsco Infrastructure Segment. Throughout the remainder of 2010, the Company plans to continue to manage its balanced portfolio and consider opportunities to invest in value creation projects. Additionally, the Company intends to increase growth investments in the Harsco Metals and Rail Segments, most likely in 2011 and beyond, as these businesses continue to expand globally.

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**Cash Used in Financing Activities** — The following table summarizes the Company's debt and capital positions at September 30, 2010 and December 31, 2009.

(Dollars are in millions)	September 30 2010	December 31 2009
Notes Payable and Current Maturities	\$ 324.8	\$ 83.2
Long-term Debt	850.6	901.7
Total Debt	1,175.4	984.9
Total Equity	1,537.8	1,509.8
Total Capital	\$ 2,713.2	\$ 2,494.7
Total Debt to Total Capital (a)	43.3%	39.5%

(a) Calculated as Total debt/Total capital.

The Company's debt as a percent of total capital at September 30, 2010 increased from December 31, 2009. The increase results from the issuance of \$250 million principal amount of 2.7% notes due in 2015.

## Debt Covenants

The Company's credit facilities and the 7.25% British pound sterling-denominated notes contain a covenant stipulating a maximum debt to capital ratio of 60%. Certain notes payable agreements also contain a covenant requiring a minimum net worth of \$475 million. In addition, one credit facility limits the proportion of subsidiary consolidated indebtedness to 10% of consolidated tangible assets. At September 30, 2010, the Company was in compliance with these covenants with a debt to capital ratio of 43.3% and total net worth of \$1.5 billion. Based on balances at September 30, 2010, the Company could increase borrowings by approximately \$1.1 billion and still be within its debt covenants. Alternatively, keeping all other factors constant, the Company's equity could decrease by approximately \$754 million and the Company would still be within its debt covenants. Additionally, the Company's 5.75% and 2.70% notes include covenants that permit the note holders to redeem their notes at 101% of par in the event of a change of control of the Company or disposition of a significant portion of the Company's assets in combination with the Company's credit rating downgraded to non-investment grade. The Company expects to continue to be compliant with these debt covenants one year from now.

## Cash and Value-Based Management

The Company has various cash management systems throughout the world that centralize cash at various bank accounts where it is economically justifiable and legally permissible to do so. These centralized cash balances are then redeployed to other operations to reduce short-term borrowings and to finance working capital needs or capital expenditures. Due to the transitory nature of cash balances, they are normally invested in bank deposits that can be withdrawn at will or in very liquid short-term bank time deposits and government obligations. The Company's policy is to use banks located in the various countries in which the Company operates rated "A" or better or if no such banks exist, to use the largest banks within those countries. The Company continuously monitors the creditworthiness of its banks and when appropriate will adjust its banking operations to reduce or eliminate exposure to less creditworthy banks.

The Company plans to continue with its strategy of targeted, prudent investing for strategic purposes for the foreseeable future, continuing to make more efficient use of existing investments. The long-term goal of this strategy is to create stockholder value by improving the Company's EVA. Under this program, the Company evaluates strategic investments based upon the investment's economic profit. EVA equals after-tax operating profits less a charge for the use of the capital employed to create those profits. Therefore, value is created when a project or initiative produces a return above the cost of capital. In the first nine months of 2010, EVA was lower compared with the first nine months of 2009 due to lower operating profits, principally in the Harsco Infrastructure Segment.

The Company currently expects to continue paying dividends to stockholders. In August 2010, the Company paid its 241<sup>st</sup> consecutive quarterly cash dividend. In September 2010, the Company declared its 242<sup>nd</sup> consecutive quarterly cash dividend.

The Company's financial position and debt capacity should enable it to meet current and future requirements. As additional resources are needed, the Company should be able to obtain funds readily and at competitive costs. The Company is well-positioned financially and intends to: continue investing in high-return, organic growth projects and prudent, strategic alliances and joint ventures; to reduce debt; and pay cash dividends as a means of enhancing stockholder value.

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**Recently Adopted and Recently Issued Accounting Standards**

Information on recently adopted and recently issued accounting standards is included in Note K, "Recently Adopted and Recently Issued Accounting Standards," in Part I, Item 1, Financial Statements.

**ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

See Part II, Item 1A, "Risk Factors," for quantitative and qualitative disclosures about market risk.

**ITEM 4. CONTROLS AND PROCEDURES**

The Company's management, including the Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of disclosure controls and procedures as of September 30, 2010. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures are effective. There have been no changes in internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, internal control over financial reporting during the third quarter of 2010.

**PART II – OTHER INFORMATION**

**ITEM 1. LEGAL PROCEEDINGS**

Information on legal proceedings is included in Note H, "Commitments and Contingencies," in Part I, Item 1, Financial Statements.

**ITEM 1A. RISK FACTORS**

In the normal course of business, the Company is routinely subjected to a variety of risks. In addition to the market risk associated with interest rate and currency movements on outstanding debt and non-U.S. dollar-denominated assets and liabilities, other examples of risk include adverse economic conditions and increased competition in the global non-residential construction markets; customer concentration in the Harsco Metals and Harsco Rail Segments and certain businesses of the "All Other" Category; collectibility of receivables; volatility of the financial markets and their effect on pension plans and the availability of funding of non-residential construction projects; and global economic and political conditions.

For a full disclosure of risk factors that affect the Company, see the Company's 2009 Annual Report on Form 10-K (Part I, Item 1A).

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**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

- (a) There were no unregistered sales of equity securities during the period covered by the report.
- (b) Not applicable.
- (c) Issuer Purchases of Equity Securities.

<u>Period</u>	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs</u>
July 1, 2010 – July 31, 2010	—	—	—	2,000,000
August 1, 2010 – August 31, 2010	—	—	—	2,000,000
September 1, 2010 – September 30, 2010	—	—	—	2,000,000
<b>Total</b>	—	—	—	

The Company's share repurchase program was extended by the Board of Directors in September 2009. At that time, the Board authorized an increase of 463,353 shares to the 1,536,647 remaining from the Board's previous stock repurchase authorization. The repurchase program expires January 31, 2011. As of September 30, 2010, there are 2,000,000 authorized shares remaining in the program. When and if appropriate, repurchases are made in open market transactions, depending on market conditions. Repurchases may not be made and may be discontinued at any time.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

**ITEM 4. (REMOVED AND RESERVED)**

**ITEM 5. OTHER INFORMATION**

**DIVIDEND INFORMATION**

On September 21, 2010, the Company's Board of Directors declared a quarterly cash dividend of \$0.205 per share, payable November 15, 2010, to stockholders of record as of October 15, 2010.

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**ITEM 6. EXHIBITS**

The following exhibits are filed as a part of this report:

<u>Exhibit Number</u>	<u>Description</u>
4(a)	Indenture, dated as of September 20, 2010, by and between Harsco Corporation and Wells Fargo Bank, National Association, as trustee
4(b)	First Supplemental Indenture, dated as of September 20, 2010, by and between Harsco Corporation and Wells Fargo Bank, National Association, as trustee
4(c)	Form of 2.700% Senior Notes due 2015
31(a)	Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer)
31(b)	Certification Pursuant to Rule 13a-14(a) and 15d-14(a), as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Chief Financial Officer)
32	Certifications Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chief Executive Officer and Chief Financial Officer)
101	The following materials from Harsco Corporation's Quarterly Report on Form 10-Q for the quarter ended September 30, 2010 are furnished herewith, formatted in XBRL (Extensible Business Reporting Language): (i) the Condensed Consolidated Statements of Income; (ii) the Condensed Consolidated Balance Sheets; (iii) the Condensed Consolidated Statements of Cash Flows; (iv) the Condensed Consolidated Statements of Equity; (v) the Condensed Consolidated Statements of Comprehensive Income; and (vi) Notes to Condensed Consolidated Financial Statements, tagged as blocks of text.

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**SIGNATURES**

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

HARSCO CORPORATION  
\_\_\_\_\_  
(Registrant)

DATE November 4, 2010

\_\_\_\_\_  
/S/ Stephen J. Schnoor

Stephen J. Schnoor  
Senior Vice President,  
Chief Financial Officer and Treasurer

DATE November 4, 2010

\_\_\_\_\_  
/S/ Richard M. Wagner

Richard M. Wagner  
Vice President and Controller





**INDENTURE**  
**SENIOR SECURITIES**  
**SEPTEMBER 20, 2010**  
**HARSCO CORPORATION,**  
**ISSUER**  
**AND**  
**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
**TRUSTEE**

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INDENTURE, dated as of September 20, 2010, between Harsco Corporation, a corporation duly organized and existing under the laws of Delaware (herein called the "Company"), having its principal office at 350 Poplar Church Road, Camp Hill, Pennsylvania 17011, and Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, as Trustee (herein called the "Trustee").

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

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the "Securities"), to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid and legally binding agreement of the Company, in accordance with its terms, have been done.

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

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

#### **ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION**

##### Section 1.1 Definitions

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (b) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles, and, except as otherwise herein expressly provided, the term GAAP with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted at the date of such computation;
- (d) the words "Article" and "Section" refer to an Article and Section, respectively, of this Indenture;

(e) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision; and

(f) Certain terms used principally in Articles III, V, XII and XIII are defined in those Articles.

“Act,” when used with respect to any Holder, has the meaning specified in Section 1.4.

“Affiliate” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Bankruptcy Law” means Title 11, U.S. Code or any similar Federal, state or foreign law for the relief of debtors.

“Board of Directors” means either the board of directors of the Company or any duly authorized committee of that board.

“Business Day,” when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close.

“Commission” means the Securities and Exchange Commission, from time to time constituted, created under the Exchange Act or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“Company” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“Company Request” or “Company Order” means a written request or order signed in the name of the Company by its Chairman of the Board, any Vice Chairman of the Board, its President, its Chief Executive Officer, any Senior Vice President or any Vice President, and by its Chief Financial Officer, its Contoller, its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary, and delivered to the Trustee.

“Corporate Trust Office” means the principal office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 45 Broadway, 14th Floor, New York, New York 10006, Attention: Corporate Trust Services — Administrator — Harsco Corporation, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

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“Corporation” means a corporation, association, company, joint-stock company or business trust.

“Covenant Defeasance” has the meaning specified in Section 13.3.

“Defaulted Interest” has the meaning specified in Section 3.7.

“Defeasance” has the meaning specified in Section 13.2.

“Defeasible Series” has the meaning specified in Section 13.1.

“Depository” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as Depository for such Securities as contemplated by Section 3.1.

“Establishment Action” shall mean:

(a) a resolution duly adopted by the Company’s Board of Directors establishing one or more series of Securities, authorizing the issuance of any Security and/or authorizing any other action that may be taken by the Company in connection with this Indenture or the Securities, or

(b) a resolution or action by a committee, officer or employee of the Corporation, establishing one or more series of Securities, authorizing the issuance of any Security and/or authorizing any other action that may be taken by the Company in connection with this Indenture or the Securities, in each case, pursuant to a resolution duly adopted by the Company’s Board of Directors.

“Event of Default” has the meaning specified in Section 5.1.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and any statute successor thereto.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Financial Accounting Standards Board, the Commission or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

“Global Security” means a Security that evidences all or part of the Securities of any series and is authenticated and delivered to, and registered in the name of, the Depository for such Securities or a nominee thereof.

“Holder” means a Person in whose name a Security is registered in the Security Register.

“Indenture” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument, and any such supplemental

a part of and govern this instrument and any such supplemental indenture, respectively. The term “Indenture” shall also include the terms of particular series of Securities established as contemplated by Section 3.1.

“Interest,” when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, means interest payable after Maturity.

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

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

“Notice of Default” means a written notice of the kind specified in Section 5.1(d).

“Officers’ Certificate” means a certificate signed by the Chairman of the Board, any Vice Chairman of the Board, the President, the Chief Executive Officer, any Senior Vice President or any Vice President, and by the Chief Financial Officer, the Controller, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary, of the Company, and delivered to the Trustee.

“Opinion of Counsel” means a written opinion of counsel, who may be counsel for the Company or any of its subsidiaries.

“Original Issue Discount Security” means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2.

“Outstanding,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

- (a) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (b) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (c) Securities as to which Defeasance has been effected pursuant to Section 13.2; and
- (d) Securities which have been paid pursuant to Section 3.6 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been

presented to the Trustee proof satisfactory to it that such Securities are held by a Protected Purchaser in whose hands such Securities are valid obligations of the Company;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, (i) the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon acceleration of the Maturity thereof to such date pursuant to Section 5.2, (ii) the principal amount of a Security denominated in one or more foreign currencies or currency units shall be the U.S. dollar equivalent, determined in the manner provided as contemplated by Section 3.1 on the date of original issuance of such Security, of the principal amount (or, in the case of an Original Issue Discount Security, the U.S. dollar equivalent on the date of original issuance of such Security of the amount determined as provided in Clause (i) above) of such Security, and (iii) Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

“Paying Agent” means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, joint stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Place of Payment,” when used with respect to the Securities of any series, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as specified as contemplated by Section 3.1.

“Predecessor Security” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.6 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

“Protected Purchaser” shall have the meaning set forth in Section 8-303 of the Uniform Commercial Code as in effect in the State of New York from time to time.

“Redemption Date,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

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“Redemption Price,” when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“Regular Record Date” for the interest payable on any Interest Payment Date on the Securities of any series means the date specified for that purpose as contemplated by Section 3.1.

“Responsible Officer” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Securities” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and any statute successor thereto.

“Security Register” and “Security Registrar” have the respective meanings specified in Section 3.5.

“Special Record Date” for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.7.

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

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended from time to time, and any statute successor thereto.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Securities of any series shall mean each Trustee with respect to Securities of that series.

“U.S. Government Obligations” has the meaning specified in Section 13.4.

“USA PATRIOT Act” has the meaning specified in Section 1.16.

“Vice President,” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president”.

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## Section 1.2 Compliance Certificates and Opinions

Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by the required officers of the Company, or an Opinion of Counsel in a form reasonably satisfactory to the Trustee, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

## Section 1.3 Form of Documents Delivered to Trustee

In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person



may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of the officers of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or opinion of counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company or any subsidiary of the Company stating that the information with respect to such factual matters is in the possession of the Company or any subsidiary of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

#### Section 1.4 Acts of Holders; Record Dates

Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.1) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Securities shall be proved by the Security Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

The Company may, in the circumstances permitted by the Trust Indenture Act, set any day as the record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given or taken by Holders of Securities of such series. With regard to any record date set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date (or their duly appointed agents), and only such Persons, shall be entitled to give or take the relevant action, whether or not such Holders remain Holders after such record date. With regard to any action that may be given or taken hereunder only by Holders of a requisite principal amount of Outstanding Securities of any series (or their duly appointed agents) and for which a record date is set pursuant to this paragraph, the Company may, at its option, set an expiration date after which no such action purported to be given or taken by any Holder shall be effective hereunder

unless given or taken on or prior to such expiration date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date (or their duly appointed agents). On or prior to any expiration date set pursuant to this paragraph, the Company may, on one or more occasions at its option, extend such date to any later date. Nothing in this paragraph shall prevent any Holder (or any duly appointed agent thereof) from giving or taking, after any such expiration date, any action identical to, or, at any time, contrary to or different from, the action or purported action to which such expiration date relates, in which event the Company may set a record date in respect thereof pursuant to this paragraph. Nothing in this paragraph shall be construed to render ineffective any action taken at any time by the Holders (or their duly appointed agents) of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is so taken. Notwithstanding the foregoing or the Trust Indenture Act, the Company shall not set a record date for, and the provisions of this paragraph shall not apply with respect to, any notice, declaration or direction referred to in the next paragraph.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 5.2, if an Event of Default with respect to Securities of such series has occurred and is continuing and the Trustee shall not have given such a declaration to the Company, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12, in each case with respect to Securities of such series. Promptly after any record date is set pursuant to this paragraph, the Trustee shall notify the Company and the Holders of Outstanding Series of such series of any such record date so fixed and the proposed action. The Holders of Outstanding Securities of such series on such record date (or their duly appointed agents), and only such Persons, shall be entitled to join in such notice, declaration or direction, whether or not such Holders remain Holders after such record date; provided that, unless such notice, declaration or direction shall have become effective by virtue of Holders of the requisite principal amount of Outstanding Securities of such series on such record date (or their duly appointed agents) having joined therein on or prior to the 90th day after such record date, such notice, declaration or direction shall automatically and without any action by any Person be cancelled and of no further effect. Nothing in this paragraph shall be construed to prevent a Holder (or a duly appointed agent thereof) from giving, before or after the expiration of such 90-day period, a notice, declaration or direction contrary to or different from, or, after the expiration of such period, identical to, the notice, declaration or direction to which such record date relates, in which event a new record date in respect thereof shall be set pursuant to this paragraph. Nothing in this paragraph shall be construed to render ineffective

any notice, declaration or direction of the type referred to in this paragraph given at any time to the Trustee and the Company by Holders (or their duly appointed agents) of the requisite principal amount of Outstanding Securities of the relevant series on the date such notice, declaration or direction is so given.

Without limiting the foregoing, a Holder entitled hereunder to give or take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any different part of such principal amount.

#### Section 1.5 Notices, Etc., to Trustee and Company

Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

- (a) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (which may be via facsimile) to or with the Trustee at its Corporate Trust Office, or
- (b) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

Any and all requests, demands, authorizations, directions, notices, consents or otherwise delivered hereunder or in connection herewith, by any party, shall be in writing.

#### Section 1.6 Notice to Holders; Waiver

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent via electronic transmission (including through the Depository), mailed, first-class postage prepaid, or delivered by hand or overnight courier, to each Holder affected by such event, at his address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is sent electronically, mailed or delivered by hand or overnight courier, neither the failure to send, mail or deliver by hand or overnight courier any notice, nor any defect in any notice so sent, mailed or delivered by hand or overnight courier, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

#### Section 1.7 Conflict with Trust Indenture Act

If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be. Wherever this Indenture refers to a provision of the Trust Indenture Act, such provision is incorporated by reference in and made a part of this Indenture.

The following Trust Indenture Act terms used in this Indenture have the following meanings:

“Commission” means the United States Securities and Exchange Commission;

“indenture securities” means the Securities;

“indenture security holder” means a Holder;

“indenture to be qualified” means this Indenture;

“indenture trustee” or “institutional trustee” means the Trustee; and

“obligor on the indenture securities” means the Company and any other obligor on the Securities.

All other Trust Indenture Act terms used in this Indenture that are defined by the Trust Indenture Act, defined by the Trust Indenture Act referenced to another statute or defined by any Commission Rule and not otherwise defined herein have the meanings defined to them thereby.

#### Section 1.8 Effect of Headings and Table of Contents

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

#### Section 1.9 Successors and Assigns

All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

#### Section 1.10 Separability Clause

In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

#### Section 1.11 Benefits of Indenture

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture.

#### Section 1.12 Governing Law

This Indenture and the Securities shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles thereof.

#### Section 1.13 Legal Holidays

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Security, the last date on which a Holder has the right to convert his Securities or any other date requiring action hereunder shall not be a Business Day at any Place of Payment, then

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(notwithstanding any other provision of this Indenture or of the Securities (other than a provision of the Securities of any series which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) or conversion of the Securities need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, or on such last day for conversion or any other date requiring action hereunder, provided that no interest shall accrue for the intervening period.

#### Section 1.14 Waiver of Jury Trial

EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

#### Section 1.15 Force Majeure

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

#### Section 1.16 USA PATRIOT Act

The parties hereto acknowledge that in accordance with Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), the Trustee is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may reasonably request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

## ARTICLE II SECURITY FORMS

#### Section 2.1 Forms Generally

The Securities of each series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to an Establishment Action, reasonably satisfactory to the Trustee, or in one or more indentures supplemental hereto, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification

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and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities. If the form of Securities of any series is established by action taken pursuant to an Establishment Action, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.3 for the authentication and delivery of such Securities.

The definitive Securities shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

#### Section 2.2 Form of Face of Security

[Insert any legend required by the Internal Revenue Code and the regulations thereunder.]

No. [·]§[·]

Harsco Corporation, a corporation duly organized and existing under the laws of Delaware (herein called the “Company,” which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to [·], or registered assigns, the principal sum of [·] Dollars on [·] [if the Security is to bear interest prior to Maturity, insert —, and to pay interest thereon from [·] or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on [·] (or the first Business Day thereafter if [·] is not a Business Day) and [·] (or the first Business Day thereafter if [·] is not a Business Day) in each year, commencing [·], at the rate of [·]% per annum on the basis of a 360-day year consisting of twelve 30-day months, until the principal hereof is paid or made available for payment [if applicable, insert —, and at the rate of [·]% per annum on any overdue principal and premium and on any overdue installment of interest]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the [·] or [·] (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture].

[If the Security is not to bear interest prior to Maturity, insert — The principal of this Security shall not bear interest except in the case of a default in payment of principal upon

acceleration, upon redemption or at Stated Maturity and in such case the overdue principal of this Security shall bear interest at the rate of [·]% per annum, which shall accrue from the date of such default in payment to the date payment of such principal has been made or duly provided for. Interest on any overdue principal shall be payable on demand. Any such interest on any overdue principal that is not so paid on demand shall bear interest at the rate of [·]% per annum, which shall accrue from the date of such demand for payment to the date payment of such interest has been made or duly provided for, and such interest shall also be payable on demand.]

Payment of the principal of (and premium, if any) and [if applicable, insert — any such] interest on this Security will be made at the office or agency of the Company maintained for that purpose in [·], in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts [if applicable, insert —; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register].

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated: [·]

HARSCO CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Section 2.3 Form of Reverse of Security

This Security is one of a duly authorized issue of securities of the Company (herein called the “Securities”), issued and to be issued in one or more series under an Indenture, dated as of [·], 2010 (herein called the “Indenture”), between the Company and Wells Fargo Bank, National Association, as Trustee (herein called the “Trustee,” which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof [if applicable, insert —, limited in aggregate principal amount to \$[·]].

[If applicable, insert] — Subject to and upon compliance with the provisions of the Indenture, the Holder of this Security is entitled, at the Holder’s option, at any time on or before the close of business on [·], or in case this Security or a portion hereof is called for redemption, then in respect of this Security or such portion hereof until and including, but (unless the Company defaults in making the payment due upon redemption) not after, the close of business on the 10th calendar day before the Redemption Date, to convert this Security (or any portion of the principal amount hereof which is \$1,000 or an integral multiple thereof), at the principal amount hereof, or of such portion, into fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/100 of a share) of Common Stock of the Company at a conversion price per share of Common Stock equal to \$[·] per each share of Common Stock (or at the current adjusted conversion price if an adjustment has been made as provided in the Indenture) by surrender of this Security, duly endorsed or assigned to the Company or in blank, to the Company at its office or agency in [·], accompanied by written notice to the Company that the Holder hereof elects to convert this Security, or if less than the entire principal amount hereof is to be converted, the portion hereof to be converted, and, in case such surrender shall be made during the period from the close of business on any Regular Record Date next preceding any Interest Payment Date to the opening of business on such Interest Payment Date (unless this Security or the portion thereof being converted has been called for redemption on a Redemption Date within such period), also accompanied by payment in funds acceptable to the Company of an amount equal to the interest payable on such Interest Payment Date on the principal amount of this Security then being converted. Subject to the aforesaid requirement for payment and, in the case of a conversion after the Regular Record Date next preceding any Interest Payment Date and on or before such Interest Payment Date, to the right of the Holder of this Security (or any Predecessor Security) of record at such Regular Record Date to receive an installment of interest (with certain exceptions provided in the Indenture), no payment or adjustment is to be made on conversion for interest accrued hereon or for dividends on the Common Stock issued on conversion. No fractions of shares or scrip representing fractions of shares will be issued on conversion, but instead of any fractional interest the Company shall pay a cash adjustment as provided in the Indenture. The conversion price is subject to adjustment as provided in the Indenture. In addition, the Indenture provides that in case of certain consolidations or mergers to which the Company is a party or the transfer of substantially all of the assets of the Company, the Indenture shall be amended, without the consent of any Holders of Securities, so that this Security, if then outstanding, will be convertible thereafter, during the period this Security shall be convertible as specified above, only into the kind and amount of securities, cash and other

property receivable upon the consolidation, merger or transfer by a holder of the number of shares of Common Stock into which this Security might have been converted immediately prior to such consolidation, merger or transfer (assuming such holder of Common Stock failed to exercise any rights of election and received per share the kind and amount received per share by a plurality of non-electing shares).]

[If applicable, insert] — The Securities of this series are subject to redemption upon not less than 30 days’ notice by mail, [if applicable, insert — (1) on [·] in any year commencing with the year [·] and ending with the year [·] through operation of the sinking fund for this series at a Redemption Price equal to 100% of the principal amount, and (2)] at any time [if applicable, insert — on or after [·], 20 [·]], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert — on or before [·], [·] %], and if redeemed] during the 12-month period beginning [·] of the years indicated,

Year	Redemption Price	Year	Redemption Price

and thereafter at a Redemption Price equal to [·] % of the principal amount, together in the case of any such redemption [if applicable, insert] — (whether through operation of the sinking fund or otherwise)] with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.

[If applicable, insert] — The Securities of this series are subject to redemption upon not less than 30 days’ notice by mail, (1) on [·] in any year commencing with the year [·] and ending with the year [·] through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [if applicable, insert] — on or after [·], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning [·] of the years indicated,

Year	Redemption Price For Redemption Through Operation of the Sinking Fund	Redemption Price For Redemption Otherwise Than Through Operation of the Sinking Fund

and thereafter at a Redemption Price equal to [·] % of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert] — The sinking fund for this series provides for the redemption on [·] in each year beginning with the year [·] and ending with the year [·] of [if applicable, insert] — not less than \$ [·] (“mandatory sinking fund”) and not more than \$ [·] aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [if applicable, insert mandatory] sinking fund payments [if applicable, insert and Securities surrendered for conversion] may be credited against subsequent [if applicable, insert — mandatory] sinking fund payments otherwise required to be made [if applicable, insert — in the inverse order in which they become due].

[If the Security is subject to redemption of any kind, insert] — In the event of redemption or conversion of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed or unconverted portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.]

[If applicable, insert — The Indenture contains provisions for defeasance at any time of [(1) the entire indebtedness of this Security or (2)] certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.]

[If the Security is not an Original Issue Discount Security, insert — If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.]

[If the Security is an Original Issue Discount Security, insert — If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to — insert formula for determining the amount. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal and overdue interest all of the Company's obligations in respect of the payment of the principal of and interest, if any, on the Securities of this series shall terminate.]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to

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waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to the Trustee and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company or the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

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Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

#### Section 2.4 Form of Legend for Global Securities

Unless otherwise specified as contemplated by Section 3.1 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of a Depository or a nominee thereof. This Security may not be transferred to, or registered or exchanged for Securities registered in the name of, any Person other than the Depository or a nominee thereof and no such transfer may be registered, except in the limited circumstances described in the Indenture. Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, this Security shall be a Global Security subject to the foregoing, except in such limited circumstances.

#### Section 2.5 Form of Trustee's Certificate of Authentication

The Trustee's certificates of authentication shall be in substantially the following form:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Wells Fargo Bank, National Association, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated: \_\_\_\_\_

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### ARTICLE III THE SECURITIES

#### Section 3.1 Amount Unlimited; Issuable in Series

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to an Establishment Action and, subject to Section 3.3, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series,

- (a) the title of the Securities of the series, including CUSIP Numbers (which shall distinguish the Securities of the series from Securities of any other series);
- (b) any limit upon the aggregate principal amount of the Securities of the series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 3.4, 3.5, 3.6, 9.6 or 11.7 and except for any Securities which, pursuant to Section 3.3, are deemed never to have been authenticated and delivered hereunder);
- (c) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;
- (d) the date or dates on which the principal of the Securities of the series is payable;
- (e) the rate or rates at which the Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any interest payable on any Interest Payment Date;
- (f) the place or places where the principal of and any premium and interest on Securities of the series shall be payable;
- (g) the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (h) the obligation, if any, of the Company to redeem or purchase Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

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- (i) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which Securities of the series shall be issuable;
  - (j) the currency, currencies or currency units in which payment of the principal of and any premium and interest on any Securities of the series shall be payable if other than the currency of the United States of America and the manner of determining the equivalent thereof in the currency of the United States of America for purposes of the definition of "Outstanding" in Section 1.1;
  - (k) if the amount of payments of principal of or any premium or interest on any Securities of the series may be determined with reference to an index, the manner in which such amounts shall be determined;
  - (l) if the principal of or any premium or interest on any Securities of the series is to be payable, at the election of the Company or a Holder thereof, in one or more currencies or currency units other than that or those in which the Securities are stated to be payable, the currency, currencies or currency units in which payment of the principal of and any premium and interest on Securities of such series as to which such election is made shall be payable, and the periods within which and the terms and conditions upon which such election is to be made;
  - (m) if other than the principal amount thereof, the portion of the principal amount of Securities of the series which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 5.2;

(n) if applicable, that the Securities of the series shall be subject to either or both of Defeasance or Covenant Defeasance as provided in Article XIII; provided that no series of Securities that is convertible into or exchangeable for any other securities pursuant to Section 3.1(p) shall be subject to Defeasance pursuant to Section 13.2;

(o) if and as applicable, that the Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the Depositary or Depositaries for such Global Security or Global Securities and any circumstances other than those set forth in Section 3.5 in which any such Global Security may be transferred to, and registered and exchanged for Securities registered in the name of, a Person other than the Depositary for such Global Security or a nominee thereof and in which any such transfer may be registered;

(p) the terms and conditions, if any, pursuant to which the Securities are convertible into or exchangeable for any other securities;

(q) any addition to or change in the covenants set forth in Article X which applies to Securities of the series; and

(r) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 9.1(e)).

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to an Establishment Action referred to above and (subject to Section 3.3) set forth, or determined in the manner provided, in the Officers' Certificate referred to above or in any such indenture supplemental hereto.

If any of the terms of the series are established by action taken pursuant to an Establishment Action, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

The Company may, from time to time, by an Establishment Action reasonably satisfactory to the Trustee and subject to compliance with any other applicable provisions of this Indenture, without the consent of the Holders, create and issue pursuant to this Indenture additional securities of any series of Securities ("Add On Securities") having terms and conditions identical to those of such series of Outstanding Securities, except that such Add On Securities:

(a) may have a different issue date from such series of Outstanding Securities;

(b) may have a different amount of interest payable on the first Interest Payment Date after issuance than is payable on such series of Outstanding Securities; and

(c) may have terms specified in such Establishment Action for such Add On Securities making appropriate adjustments to this Article III applicable to such Add On Securities in order to conform to and ensure compliance with the Securities Act (or applicable securities laws) which are not adverse in any material respect to the Holder of any Outstanding Securities (other than such Add On Securities) and which shall not affect the rights or duties of the Trustee.

### Section 3.2 Denominations

The Securities of each series shall be issuable only in registered form without coupons in such denominations as shall be specified as contemplated by Section 3.1. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

### Section 3.3 Execution, Authentication, Delivery and Dating

The Securities shall be executed on behalf of the Company by its Chairman of the Board, any Vice Chairman of the Board, its President, its Chief Executive Officer, any Senior Vice President or any Vice President, and attested by its Chief Financial Officer, its Controller, its Treasurer, any Assistant Treasurer, its Secretary or any Assistant Secretary. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any Series executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. If the form or terms of the Securities of the series have been established in or pursuant to one or more Establishment Actions as permitted by Sections 2.1 and 3.1, in authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be provided with, and (subject to Section 6.1) shall be fully protected in conclusively relying upon, an Opinion of Counsel stating,

(a) if the form of such Securities has been established by an Establishment Action as permitted by Section 2.1, that such form has been established in conformity with the provisions of this Indenture;

(b) if the terms of such Securities have been established by an Establishment Action as permitted by Section 3.1, that such terms have been established in conformity with the provisions of this Indenture; and



(c) that such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute valid and legally binding obligations of the Company enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 3.1 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officers' Certificate otherwise required pursuant to Section 3.1 or the Company Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the time of authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

The Trustee shall have the right to decline to authenticate and deliver any Add On Securities under this Section 3.3 if the Trustee determines that such action may not lawfully be taken by the Company or if the Trustee in good faith by its board of directors or board of trustees, executive committee or a trust committee of directors or trustees or Responsible Officers shall determine that such action would expose the Trustee to personal liability.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially

in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.9, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

#### Section 3.4 Temporary Securities

Pending the preparation of definitive Securities of any series, the Company may execute, and, upon receipt by the Trustee of a Company Order and in accordance with the terms hereof, the Trustee shall authenticate and deliver, temporary Securities, in a form reasonably satisfactory to the Trustee, which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor. Until so exchanged the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

#### Section 3.5 Registration, Registration of Transfer and Exchange

The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company in a Place of Payment being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed the initial "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of any series at the office or agency in a Place of Payment for that series, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

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

Each Holder of a Security agrees to indemnify the Company and the Trustee against any and all liability that may result from the transfer, exchange or assignment of such Holder's Security in violation of any provision of this Indenture and/or applicable United States federal or state securities laws.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among participants of the Depository or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company or Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.4, 9.6 or 11.7 not involving any transfer.

The Company shall not be required (a) to issue, register the transfer of or exchange Securities of any series during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities of that series selected for redemption under Section 11.3 and ending at the close of business on the day of such mailing, or (b) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Notwithstanding any other provision in this Indenture, no Global Security may be transferred to, or registered or exchanged for Securities registered in the name of, any Person other than the Depository for such Global Security or any nominee thereof, and no such transfer may be registered, unless (w) such Depository (i) notifies the Company that it is unwilling or

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unable to continue as Depository for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act, (x) the Company executes and delivers to the Trustee a Company Order that such Global Security shall be so transferable, registrable and exchangeable, and such transfers shall be registrable, (y) there shall have occurred and be continuing an Event of Default with respect to the Securities evidenced by such Global Security or (z) there shall exist such other circumstances, if any, as have been specified for this purpose as contemplated by Section 3.1. Notwithstanding any other provision in this Indenture, a Global Security to which the restriction set forth in the preceding sentence shall have ceased to apply may be transferred only to, and may be registered and exchanged for Securities registered only in the name or names of, such Person or Persons as the Depository for such Global Security shall have directed and no transfer thereof other than such a transfer may be registered.

Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security to which the restriction set forth in the first sentence of the preceding paragraph shall apply, whether pursuant to this Section, Section 3.4, 3.6, 9.6 or 11.7 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security. The Trustee shall not have any liability for any actions taken or not taken by the Depository.

#### Section 3.6 Mutilated, Destroyed, Lost and Stolen Securities

If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the destruction, loss or theft of any Security and (b) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a Protected Purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section in exchange for any mutilated Security or in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits

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of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

#### Section 3.7 Payment of Interest; Interest Rights Preserved

Except as otherwise provided as contemplated by Section 3.1 with respect to any series of Securities, interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest.

Any amounts to be delivered to the Trustee or the Paying Agent in connection with any payment of interest, shall be deposited with the Trustee or the Paying Agent prior to 11:00 a.m., New York City time, on such Interest Payment Date by the Company in immediately available funds.

Any interest on any Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Securities of such series at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the

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Persons in whose names the Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (b).

(b) The Company may make payment of any Defaulted Interest on the Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Securities may be listed, and upon such notice as may be required by such exchange, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this Clause, such manner of payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date, interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence in the case of any Security which is converted, interest whose Stated Maturity is after the date of conversion of such Security, shall not be payable.

### Section 3.8 Persons Deemed Owners

Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 3.7) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

### Section 3.9 Cancellation

All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as

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provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in its customary manner.

### Section 3.10 Computation of Interest

Except as otherwise specified as contemplated by Section 3.1 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

### Section 3.11 CUSIP Numbers

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification

numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any changes in the "CUSIP" numbers.

#### **ARTICLE IV SATISFACTION AND DISCHARGE**

##### Section 4.1 Satisfaction and Discharge of Indenture

This Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

- (a) either
  - (i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation; or
  - (ii) all such Securities not theretofore delivered to the Trustee for cancellation
    - (A) have become due and payable, or
    - (B) will become due and payable at their Stated Maturity within one year, or

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- (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of (A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and
- (c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.7, and, if money shall have been deposited with the Trustee pursuant to subclause (i) of Clause (a) of this Section, the obligations of the Trustee under Section 4.2 shall survive such satisfaction and discharge.

##### Section 4.2 Application of Trust Money

All money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee.

#### **ARTICLE V REMEDIES**

##### Section 5.1 Events of Default

"Event of Default," wherever used herein with respect to Securities of any series, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days;
- (b) default in the payment of the principal of (or premium, if any, on) any Security of that series at its Maturity;

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- (c) default in the deposit of any sinking fund payment, when and as due by the terms of a Security of that series, and continuance of such default for a period of 30 days;

- (d) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section specifically dealt with or which has expressly been included in this

Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(e) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days;

(f) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action; or

(g) any other Event of Default provided with respect to Securities of that series.

#### Section 5.2 Acceleration of Maturity; Rescission and Annulment

If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount

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(or, if any of the Securities of that series are Original Issue Discount Securities, such portion of the principal amount of such Securities as may be specified in the terms thereof) of all of the Securities of that series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

- (a) the Company has paid or deposited with the Trustee a sum sufficient to pay
- (i) all overdue interest on all Securities of that series,
  - (ii) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,
  - (iii) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and
  - (iv) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and
- (b) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.1.3.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

#### Section 5.3 Collection and Suits for Enforcement by Trustee

The Company covenants that if:

- (a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or
- (b) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates

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prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings at the expense of the Company as the Trustee shall deem necessary to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### Section 5.4 Trustee May File Proofs of Claim

In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under this Indenture.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

#### Section 5.5 Trustee May Enforce Claims Without Possession of Securities

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

#### Section 5.6 Application of Money Collected

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such

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money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under this Indenture;

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium and interest, respectively; and

THIRD: To the Company.

#### Section 5.7 Limitation on Suits

No Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;
- (b) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders have offered to the Trustee such security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders (it being understood that the Trustee shall have no affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to any such Holder).

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Section 5.8 Unconditional Right of Holders to Receive Principal, Premium and Interest

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 3.7) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 5.9 Restoration of Rights and Remedies

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 5.10 Rights and Remedies Cumulative

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.6, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 5.11 Delay or Omission Not Waiver

No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 5.12 Control by Holders

The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,

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- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

- (c) subject to the provisions of Section 6.1, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceedings so directed would involve the Trustee in personal liability.

Section 5.13 Waiver of Past Defaults

Subject to Section 5.2, the Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

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

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

Section 5.14 Undertaking for Costs

In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, including reasonable attorney's fees and expenses, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section nor the Trust Indenture Act shall apply to any suit instituted by the Trustee, to any suit instituted by any Holders of the Securities, or group of Holders of the Securities, holding in the aggregate more than 10% of principal amount of the Outstanding Securities of any series, or to any suit instituted by any Holder of the Outstanding Securities for the enforcement of the payment of principal of or interest on any Outstanding Securities held by such Holder, on or after the respective due dates expressed in such Outstanding Securities; and provided, further, that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company.

Section 5.15 Waiver of Usury, Stay or Extension Laws

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and

covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

## ARTICLE VI THE TRUSTEE

The Trustee hereby accepts the trust imposed upon it by this Indenture and covenants and agrees to perform the same, as herein expressed.

### Section 6.1 Duties of Trustee

- (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.
- (b) Except during the continuance of an Event of Default:
  - (i) The Trustee need perform only those duties as are specifically set forth in this Indenture and no others, and no covenants, duties or obligations shall be implied in or read into this Indenture.
  - (ii) In the absence of willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).
- (c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:
  - (i) This paragraph does not limit the effect of paragraph (b) of this Section 6.1.
  - (ii) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.
  - (iii) The Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it under this Indenture.

- (d) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or to take or omit to take any action under this Indenture if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.
- (e) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), (c), (d) and (f) of this Section 6.1.
- (f) The Trustee shall not be liable for interest on any assets received by it except as the Trustee may agree in writing with the Company. Assets held in trust by the Trustee need not be segregated from other assets except to the extent required by law.

### Section 6.2 Rights of Trustee

Subject to Section 6.1:

- (a) The Trustee may conclusively rely on and shall be fully protected, absent its own negligence or willful misconduct, in acting upon or refraining from acting upon any document (whether in its original or facsimile form) believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in any document.
- (b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such certificate or opinion.
- (c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care.
- (d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.



(e) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, notice, request, direction, consent, order, bond, debenture, or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such investigation.

(f) The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection of any action taken, suffered or omitted by in hereunder in good faith and in reliance thereon.

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(g) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder on behalf of the Trustee.

(h) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by the Trustee in compliance with such request or direction.

(i) The Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the particular Securities and this Indenture.

(j) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) The Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not suspended.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(m) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if in the form of a Company Order or Company Request pursuant to the terms hereof.

(n) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

### Section 6.3 Individual Rights of Trustee

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent or Security Registrar may do the same with like rights. However, the Trustee must comply with Sections 6.8, 6.9 and 6.10.

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### Section 6.4 Trustee's Disclaimer

The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities and it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities, other than the Trustee's certificate of authentication, or the use or application of any funds received by a Paying Agent other than the Trustee acting in such capacity.

### Section 6.5 Notice of Default

If an Event of Default with respect to Securities of any series occurs and is continuing and if it is known to a Responsible Officer of the Trustee, the Trustee shall mail to each Holder of Securities of such series notice of the uncured Event of Default within 90 days after such Event of Default occurs. Except in the case of an Event of Default in payment of principal (or premium, if any) of, or interest on, any Security, the Trustee may withhold the notice if and so long as a Responsible Officer in good faith determines that withholding the notice is in the interest of the Holders of Securities of such series.

### Section 6.6 Reports by Trustee to Holders

Within 60 days after each September 15 beginning with the September 15 in the year following the date of this Indenture, the Trustee shall mail to each Holder a brief report dated as of such September 15 that complies with Trust Indenture Act Section 313(a) if such report is required by such Trust Indenture Act Section 313(a). The Trustee also shall comply with Trust Indenture Act Sections 313(b) and 313(c).

The Company shall promptly notify the Trustee in writing if the Securities of any series become listed on any stock exchange or automatic quotation system and/or any delisting therefrom.

A copy of each report at the time of its mailing to Holders shall be mailed to the Company and filed with the Commission and each stock exchange, if any, on which the Securities are listed.

### Section 6.7 Compensation and Indemnity

The Company shall pay to the Trustee from time to time such compensation for its services as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances incurred or made by it. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents, accountants, experts and counsel.

The Company shall indemnify each of the Trustee (in its capacity as Trustee) and any predecessor Trustee and each of their respective officers, directors, attorneys-in-fact and agents for, and hold it harmless against, any claim, damage, demand, expense (including but not limited to reasonable compensation, disbursements and expenses of the Trustee's agents and counsel),

loss, charges (including taxes (other than taxes based upon the income of the Trustee)) or liability incurred by them without negligence or willful misconduct on either of their parts, arising out of or in connection with the acceptance or administration of this trust and their rights or duties hereunder including the reasonable costs and expenses of defending themselves against any claim (whether asserted by the Company, a Holder or any other Person), liability in connection with the exercise or performance of any of its powers or duties hereunder, or the action or inaction of any Paying Agent or Security Register (that is not the Trustee). The Trustee shall notify the Company promptly of any claim asserted against the Trustee for which it may seek indemnity. The Company shall defend the claim and the Trustee shall provide reasonable cooperation at the Company's expense in the defense. The Trustee may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its written consent which consent shall not be unreasonably withheld. The Company need not reimburse any expense or indemnify against any loss or liability to the extent incurred by the Trustee as determined by a court of competent jurisdiction to have been caused by its own negligence or willful misconduct.

To secure the Company's payment obligations in this Section 6.7, the Trustee shall have a lien prior to the Securities on all assets held or collected by the Trustee, in its capacity as Trustee, except assets held in trust to pay principal and premium, if any, of or interest on particular Securities.

When the Trustee incurs expenses or renders services after an Event of Default specified in Section 5.1(e) or (f) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any Bankruptcy Law.

The Company's obligations under this Section 6.7 and any lien arising hereunder shall survive the resignation or removal of the Trustee, the discharge of the Company's obligations pursuant to Article IV of this Indenture and any rejection or termination of this Indenture under any Bankruptcy Law.

#### Section 6.8 Replacement of Trustee

The Trustee may resign at any time with respect to the Securities of one or more series by so notifying the Company in writing. The Holder or Holders of a majority in principal amount of the outstanding Securities of a series may remove the Trustee with respect to Securities of such series by so notifying the Company and the Trustee in writing not less than 20 days prior to the effective date of such removal and may appoint a successor trustee with respect to Securities of such series with the Company's consent. The Company may remove the Trustee if:

- (a) the Trustee fails to comply with Section 6.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver, custodian, or other public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee, with respect to the Securities of one or more series, for any reason, the Company shall promptly appoint a successor Trustee, with respect to Securities of that or those series. Within one year after the successor Trustee with respect to a series of Securities takes office, the Holder or Holders of a majority in principal amount of the Securities of such series may appoint a successor Trustee with respect to such series to replace the successor Trustee appointed by the Company.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that and provided that all sums owing to the Trustee provided for hereunder have been paid, the retiring Trustee shall transfer all property held by it as Trustee with respect to such series of Securities to the successor Trustee, subject to the lien provided in Section 6.7, the resignation or removal of the retiring Trustee shall become effective, the Trustee with respect to such series of Securities shall cease to be Trustee under this Indenture, and subject to the provisions of Section 6.10 and this Section 6.8, the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture and, subject to any negligence or willful misconduct by the Trustee, the Trustee shall have no liability for the action or inaction of any successor Trustee. A successor Trustee with respect to one or more series of Securities shall mail notice of its succession to each Holder of Securities of that or those series.

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

If the Trustee fails to comply with Section 6.10, any Holder of Securities of a series may petition any court of competent jurisdiction for the removal of the Trustee with respect to such series and the appointment of a successor Trustee with respect to such series.

Notwithstanding replacement of the Trustee pursuant to this Section 6.8, the Company's obligations under Section 6.7 shall continue for the benefit of the retiring Trustee.

#### Section 6.9 Successor Trustee by Merger, Etc.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the resulting, surviving or transferee corporation without any further act shall, if such resulting, surviving or transferee corporation is otherwise eligible hereunder, be the successor Trustee.

Section 6.10 Eligibility; Disqualification

The Trustee shall at all times satisfy the requirements of Trust Indenture Act Section 310(a)(1) and Trust Indenture Act Section 310(a)(5). The Trustee shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent published annual report of condition. The Trustee shall comply with Trust Indenture Act Section 310(b).

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Section 6.11 Preferential Collection of Claims against Company

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

**ARTICLE VII  
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY**

Section 7.1 Company to Furnish Trustee Names and Addresses of Holders

The Company will furnish or cause to be furnished to the Trustee:

- (a) semi-annually, not more than 15 days after each Regular Record Date, a list for each series of Securities, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of such series as of the Regular Record Date, as the case may be, and
- (b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

Section 7.2 Preservation of Information; Communications to Holders

The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

The rights of the Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable or have any liability by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 7.3 Reports by Trustee

The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

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A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange or delisted therefrom.

Section 7.4 Reports by Company

The Company shall:

- (a) file with the Trustee and the Commission such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates); provided further that the filing of information, documents or reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act by an entity that is the direct or indirect parent of the Company will satisfy the requirements of this Section 7.4 so long as such entity is an obligor or guarantor on the Securities; and provided further that the reports of such entity shall not be required to include condensed consolidated financial information for the Company in a footnote to the financial statements of such entity unless so required under the rules and regulations promulgated by the Commission; and

(b) transmit to all Holders, in the manner and to the extent provided in Trust Indenture Act Section 313(c), within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to Clause (a) of this Section 7.4 as may be required by rules and regulations prescribed from time to time by the Commission.

The Trustee shall have no liability for any report required to be filed by the Company pursuant to Clause (a) of this Section 7.4, the filing thereof, the information contained therein or the timeliness of any such filing.

## **ARTICLE VIII CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE**

### **Section 8.1 When Company May Merge, Etc.**

The Company may not, in a single transaction or through a series of related transactions, consolidate with or merge with or into any other person, or, directly or indirectly, sell or convey substantially all of its assets to another person or group of affiliated persons, unless:

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(a) the Company shall be the continuing person, or the person (if other than the Company) formed by such consolidation or into which the Company is merged or to which all or substantially all of the properties and assets of the Company are transferred as an entirety or substantially as an entirety (the Company or such other person being hereinafter referred to as the "Surviving Person"), shall be organized and validly existing under the laws of the United States, any State thereof or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form and substance satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture and the Indenture, so supplemented, shall remain in full force and effect;

(b) immediately after giving effect to such transaction and the assumption of the obligations as set forth in Clause (a), above, no Event of Default shall have occurred and be continuing; and

(c) if a supplemental indenture is required in connection with such transaction, the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, assignment, or transfer and such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided relating to such transaction have been satisfied.

### **Section 8.2 Successor Substituted**

Upon any consolidation or merger, or any transfer of assets in accordance with Section 8.1, the Surviving Person formed by such consolidation or into which the Company is merged or to which such transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such Surviving Person had been named as the Company herein. When a Surviving Person duly assumes all of the obligations of the Company pursuant hereto and pursuant to the Securities, the predecessor shall be relieved of the performance and observance of all obligations and covenants of this Indenture and the Securities, including but not limited to the obligation to make payment of the principal of and interest, if any, on all the Securities then outstanding, and the Company may thereupon or any time thereafter be liquidated and dissolved.

## **ARTICLE IX SUPPLEMENTAL INDENTURES**

### **Section 9.1 Supplemental Indentures Without Consent of Holders**

Without the consent of any Holders, the Company, when authorized by an Establishment Action, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities;

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(b) to add to the covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Company;

(c) to add any additional Events of Default;

(d) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form;

(e) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (i) shall neither (A) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (B) modify the rights of the Holder of any such Security with respect to such provision or (ii) shall become effective only when there is no such Security Outstanding;

(f) to secure the Securities pursuant to the requirements of Article X or otherwise;

- (g) to add guarantors in respect of any series of Securities or to release guarantors from their guarantees of Securities in accordance with the terms of the applicable series of Securities;
- (h) to establish the form or terms of Securities of any series as permitted by Sections 2.1 and 3.1;
- (i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 6.11; or
- (j) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture, provided that such action pursuant to this Clause (i) shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

#### Section 9.2 Supplemental Indentures with Consent of Holders

With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities of each series affected by such supplemental indenture, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by an Establishment Action, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any

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of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

- (a) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest or the time of payment of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 5.2, or change the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date),
- (b) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture,
- (c) modify any of the provisions of this Section or Section 5.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby, provided, however, that this Clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 6.11 and 9.1(i),
- (d) change any obligation of the Company to maintain an office or agency,
- (e) change any obligation of the Company to pay additional amounts,
- (f) adversely affect any right of repayment or repurchase at the option of the Holder, or
- (g) reduce or postpone any sinking fund or similar provision.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

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#### Section 9.3 Execution of Supplemental Indentures

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be provided with, and (subject to Section 6.1) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 1.2, an Opinion of Counsel and an Officers’ Certificate, each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise.

#### Section 9.4 Effect of Supplemental Indentures

Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

Section 9.6 Reference in Securities to Supplemental Indentures

Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

**ARTICLE X  
COVENANTS**

Section 10.1 Payment of Securities

The Company covenants and agrees for the benefit of each series of Securities that it will pay the principal of and interest on the Securities of that series on the dates and in the manner provided in the Securities of that series and this Indenture. An installment of principal, premium, if any, or interest on the Securities shall be considered paid on the date it is due if the Trustee or Paying Agent (other than the Company or an Affiliate of the Company) holds for the benefit of the Holders, on that date, immediately available funds deposited and designated for and sufficient to pay the installment. The Company shall pay interest on overdue principal and on overdue installments of interest at the rate specified in the Securities compounded semi-annually, to the extent lawful.

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Section 10.2 Maintenance of Office or Agency

The Company shall maintain in the Place of Payment for any series of Securities, an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of that series and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

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

Section 10.3 Money for Securities Payments to Be Held in Trust

If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to each due date of the principal of or any premium or interest on any Securities of that series, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall enter into an agency agreement with a Paying Agent that is not a party to this Indenture, it will notify the Trustee in writing of the name and address of such Paying Agent.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (a) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (b) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the

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written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent

with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease, and any unclaimed balance of such money then remaining will be repaid to the Company.

#### Section 10.4 Compliance Certificate; Notice of Default

The Company shall deliver to the Trustee within 120 days after the end of its fiscal year an Officers' Certificate (one of the signatories of which shall be the Company's principal executive officer, principal financial officer or principal accounting officer) complying with Section 314(a)(4) of the Trust Indenture Act and stating that a review of its activities during the preceding fiscal year has been made under the supervision of the signing officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture (all without regard to periods of grace, which shall be deemed fulfilled unless and until the expiration of such periods or notice requirements) and further stating, as to each such officer signing such certificate, whether or not the signer knows of any failure by the Company to comply with any conditions or covenants in this Indenture and, if such signer does know of such a failure to comply, the certificate shall describe such failure with particularity. The Officers' Certificate shall also notify the Trustee should the relevant fiscal year end on any date other than the current fiscal year end date.

#### Section 10.5 Corporate Existence

Subject to Article VIII, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence in accordance with its organizational documents and the rights (charter and statutory) and corporate franchises of the Company; provided, however, that the Company shall not be required to preserve, with respect to itself, any right or franchise, if (a) the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and (b) the loss thereof is not disadvantageous in any material respect to the Holders.

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#### Section 10.6 Waiver of Certain Covenants

Except as otherwise specified as contemplated by Section 3.1 for Securities of such series, the Company may, with respect to the Securities of any series, omit in any particular instance to comply with any term, provision or condition set forth in any covenant pursuant to Section 3.1(r), 9.1(b) or 9.1(h) for the benefit of the Holders of such series, if the Holders of at least a majority in principal amount of the Outstanding Securities of such series shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition, but no such waiver shall extend to or affect such term, provision or condition except to the extent expressly waived and, until such waiver shall become effective, the obligations of the Company and the duties of the trustee in respect of any such term, provision or condition shall remain in full force and effect.

### **ARTICLE XI REDEMPTION OF SECURITIES**

#### Section 11.1 Applicability of Article

Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.1 for Securities of any series) in accordance with this Article.

#### Section 11.2 Election to Redeem; Notice to Trustee

The election of the Company to redeem any Securities shall be evidenced by an Establishment Action. In case of any redemption at the election of the Company of less than all the Securities of any series, the Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date, of the principal amount of Securities of such series to be redeemed and, if applicable, of the tenor of the Securities to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

#### Section 11.3 Selection by Trustee of Securities to Be Redeemed

If less than all the Securities of any series are to be redeemed (unless all of the Securities of such series and of a specified tenor are to be redeemed), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series. If less than all of the Securities of such series and of a specified tenor are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

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If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities which has been or is to be redeemed.

Section 11.4 Notice of Redemption

Notice of redemption shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at his address appearing in the Security Register.

All notices of redemption shall state:

- (a) the Redemption Date;
- (b) the Redemption Price;
- (c) if less than all the Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption of any Securities, the principal amounts) of the particular Securities to be redeemed;
- (d) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date;
- (e) the place or places where such Securities are to be surrendered for payment of the Redemption Price;
- (f) that the redemption is for a sinking fund, if such is the case; and
- (g) applicable CUSIP Numbers.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable.

Section 11.5 Deposit of Redemption Price

On or before 10:00 a.m., New York City time on the Redemption Date specified in the notice of redemption given as provided in Section 11.4, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.3) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities which are to be redeemed on that date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.7) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

Section 11.6 Securities Payable on Redemption Date

Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 3.1, installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 3.7.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 11.7 Securities Redeemed in Part

Any Security which is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee, upon receipt of a Company Order and in accordance with the terms hereof, shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

**ARTICLE XII  
SINKING FUNDS**

Section 12.1 Applicability of Article

The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 3.1 for Securities of such series.



The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Securities of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of Securities of any series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 12. 2. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

#### Section 12.2 Satisfaction of Sinking Fund Payments with Securities

The Company (a) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (b) may apply as a credit Securities of a series which have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to the Securities of such series required to be made pursuant to the terms of such Securities as provided for by the terms of such series; provided that such Securities have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

#### Section 12.3 Redemption of Securities for Sinking Fund

Not less than 60 days prior to each sinking fund payment date for any series of Securities, the Company will deliver to the Trustee an Officers’ Certificate specifying the amount of the next ensuing sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 12.2 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 11.3 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 11.4. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 11.6 and 11.7.

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### ARTICLE XIII DEFEASANCE AND COVENANT DEFEASANCE

#### Section 13.1 Company’s Option to Effect Defeasance or Covenant Defeasance

The Company may elect, at its option at any time, to have either Section 13.2 or Section 13.3 applied to the Outstanding Securities of any series designated pursuant to Section 3.1 as being defeasible pursuant to this Article XIII (hereinafter called a “Defeasible Series”), upon compliance with the conditions set forth below in this Article XIII; provided that Section 13.2 shall not apply to any series of Securities that is convertible into or exchangeable for any other securities pursuant to Section 3.1(p). Any such election shall be evidenced by an Establishment Action or in another manner specified as contemplated by Section 3.1 for such Securities.

#### Section 13.2 Defeasance and Discharge

Upon the Company’s exercise of the option provided in Section 13.1 to have this Section 13.2 applied to the Outstanding Securities of any Defeasible Series and subject to Section 13.1, the Company shall be deemed to have been discharged from its obligations with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called “Defeasance”). For this purpose, such Defeasance means that the Company shall be deemed to have paid and discharged the entire indebtedness represented by the Outstanding Securities of such series and to have satisfied all its other obligations under the Securities of such series and this Indenture insofar as the Securities of such series are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of Securities of such series to receive, solely from the trust fund described in Section 13.4 and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities of such series when payments are due, (b) the Company’s obligations with respect to the Securities of such series under Sections 3.4, 3.5, 3.6, 10.2 and 10.3, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (d) this Article XIII. Subject to compliance with this Article XIII, the Company may exercise its option provided in Section 13.1 to have this Section 13.2 applied to the Outstanding Securities of any Defeasible Series notwithstanding the prior exercise of its option provided in Section 13.1 to have Section 13.3 applied to the Outstanding Securities of such series.

#### Section 13.3 Covenant Defeasance

Upon the Company’s exercise of the option provided in Section 13.1 to have this Section 13.3 applied to the Outstanding Securities of any Defeasible Series, (a) the Company shall be released from its obligations under Section 8.1 and any covenants provided pursuant to Section 3.1(r), 9.1(b) or 9.1(h) for the benefit of the Holders of such Securities, and (b) the occurrence of any event specified in Sections 5.1(c), 5.1(d) (with respect to Section 8.1 and any such covenants provided pursuant to Section 3.1(r), 9.1(b) or 9.1(h)) and 5.1(g) shall be deemed not to be or result in an Event of Default, in each case with respect to the Outstanding Securities of such series as provided in this Section on and after the date the conditions set forth in Section 13.4 are satisfied (hereinafter called “Covenant Defeasance”). For this purpose, such Covenant

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Defeasance means that the Company may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 5.1(d)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and the Securities of such series shall be unaffected thereby.

#### Section 13.4 Conditions to Defeasance or Covenant Defeasance

The following shall be the conditions to application of either Section 13.2 or Section 13.3 to the Outstanding Securities of any Defeasible Series:

(a) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee that satisfies the requirements contemplated by Section 6.9 and agrees to comply with the provisions of this Article XIII applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Outstanding Securities of such series, (i) money in an amount, or (ii) U.S. Government Obligations that through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (iii) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on the Securities of such series on the respective Stated Maturities, in accordance with the terms of this Indenture and the Securities of such series. As used herein, "U.S. Government Obligation" means (x) any security that is (A) a direct obligation of the United States of America for the payment of which full faith and credit of the United States of America is pledged or (B) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation specified in Clause (x) and held by such custodian for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any such U.S. Government Obligation, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(b) In the case of an election under Section 13.2, the Company shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (ii) since the date first set forth hereinabove, there has been a change in the applicable Federal income tax law, in either case (i) or (ii) to the effect that, and based thereon such opinion shall

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confirm that, the Holders of the Outstanding Securities of such series will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to the Securities of such series and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(c) In the case of an election under Section 13.3, the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of the Outstanding Securities of such series will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to the Securities of such series and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(d) The Company shall have delivered to the Trustee an Officers' Certificate to the effect that the Securities of such series, if then listed on any securities exchange, will not be delisted as a result of such deposit.

(e) No Event of Default or event that (after notice or lapse of time or both) would become an Event of Default shall have occurred and be continuing at the time of such deposit or, with regard to any Event of Default or any such event specified in Sections 5.1(e) and (f), at any time on or prior to the 90th day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until after such 90th day).

(f) Such Defeasance or Covenant Defeasance shall not cause the Trustee to have a conflicting interest within the meaning of the Trust Indenture Act (assuming all Securities are in default within the meaning of the Trust Indenture Act).

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

(h) The Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

(i) Such Defeasance or Covenant Defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust shall be qualified under such Act or exempt from regulation thereunder.

#### Section 13.5 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions

All money and U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section and Section 13.6, the Trustee and any such other trustee are referred to collectively as the "Trustee") pursuant to

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Section 13.4 in respect of the Securities of any Defeasible Series shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities of such series and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Holders of Securities of such series, of all sums due and to become due thereon in respect of principal and any premium and interest, but money so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 13.4 or the principal and interest received in respect thereof other than any such tax, fee or other charge that by law is for the account of the Holders of Outstanding Securities.

Anything in this Article XIII to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money or U.S. Government Obligations held by it as provided in Section 13.4 with respect to Securities of any Defeasible Series that, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Defeasance or Covenant Defeasance with respect to the Securities of such series.

Section 13.6 Reinstatement

If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article XIII with respect to the Securities of any series by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's obligations under this Indenture and the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to this Article XIII with respect to Securities of such series until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 13.5 with respect to Securities of such series in accordance with this Article XIII; provided, however, that if the Company makes any payment of principal of or any premium or interest on any Security of such series following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of Securities of such series to receive such payment from the money so held in trust.

This Indenture may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

(Signature Page to Follow)

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

HARSCO CORPORATION

By: /s/ Mark E. Kimmel  
Name: Mark E. Kimmel  
Title: Senior Vice President, Chief  
Administrative Officer, General Counsel  
and Corporate Secretary

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By: /s/ Martin Reed  
Name: Martin Reed  
Title: Vice President

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**HARSCO CORPORATION**  
**AND**  
**WELLS FARGO BANK, NATIONAL ASSOCIATION**  
**as Trustee**

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**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of September 20, 2010**

**to**

**Indenture**

**Dated as of September 20, 2010**

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FIRST SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of September 20, 2010, between HARSCO CORPORATION, a Delaware corporation, and any successor thereto (the “**Company**”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as trustee (the “**Trustee**”).

Capitalized terms used herein and not otherwise defined herein have the meanings assigned to those terms in the Indenture unless otherwise indicated.

R E C I T A L S

WHEREAS, the Company executed and delivered an indenture dated as of September 20, 2010 (the “**Indenture**”) between the Company and the Trustee;

WHEREAS, Section 9.1 of the Indenture provides that the Company and the Trustee may enter into one or more indentures supplemental to the Indenture, without the consent of any Holders, to add, among other things, covenants and agreements of the Company to be observed thereafter for the protection of the Holders of all or any series of Securities and to establish the terms of any series of Securities;

WHEREAS, the Company desires to issue one series of Securities, the 2.700% Senior Notes Due 2015 (the “**Notes**”); and

WHEREAS, all requirements necessary to make this Supplemental Indenture a valid, binding and enforceable instrument in accordance with its terms have been done and performed, and the execution and delivery of this Supplemental Indenture have been duly authorized in all respects.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, the parties hereto hereby agree as follows:

ARTICLE I  
TERMS AND CONDITIONS

Section 1.1. *Terms and Conditions.* The terms and characteristics of the Notes shall be as follows (the numbered clauses set forth below corresponding to the lettered subsections of Section 3.1 of the Indenture, with terms used and not defined herein having the meanings specified in the Indenture):

- (a) the title of the Notes shall be “2.700% Senior Notes due 2015” and the CUSIP for the Notes is 415864 AK3;
- (b) the aggregate principal amount of the Notes which may be authenticated and delivered under the Indenture shall be limited to \$250,000,000; provided, however, that such authorized aggregate principal amount may from time to time

be increased above such amount by a resolution of the Board of Directors to such effect;

- (c) not applicable;
- (d) the date on which the principal of the Notes shall be payable shall be October 15, 2015;
- (e) the Notes shall bear interest at the rate of 2.700% per annum. The Interest Payment Dates on which such interest will be payable shall be April 15 and October 15 of each year, or the first business day thereafter if April 15 or October 15 is not a business day, commencing on April 15, 2010. The regular record date for the determination of Holders to whom interest is payable on any such Interest Payment Date

shall be the April 1 and October 1, as the case may be, (in each case, whether or not a business day) immediately preceding the related Interest Payment Date;

- (f) the principal of and any premium or interest on any Notes shall be payable at the office or agency of the Company maintained for that purpose at the Corporate Trust Office of the Trustee, currently located at Wells Fargo Bank, National Association, 45 Broadway, 14th Floor, New York, New York 10006, Attention: Corporate Trust Services — Administrator — Harsco Corporation;
- (g) The Notes will be redeemable in whole or in part, at the Company's option, at any time and from time to time at a redemption price equal to the greater of (i) 100% of the principal amount of the Notes to be redeemed and (ii) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate as defined below, plus 20 basis points, plus accrued interest thereon to the date of redemption.

“Treasury Rate” means, with respect to any redemption date, the rate per annum equal to the semi-annual equivalent yield to a maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount equal to the Comparable Treasury Price for such redemption date).

“Comparable Treasury Issue” means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Notes to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Notes.

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“Comparable Treasury Price” means, with respect to any redemption date, (i) the average of four Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (ii) if the trustee obtains fewer than six such Reference Treasury Dealer Quotations, the average of all such Quotations, or (iii) if only one Reference Dealer Quotation is received, such quotation.

“Independent Investment Banker” means one of the Reference Treasury Dealers that the Company appoints.

“Reference Treasury Dealer” means (i) Citigroup Global Markets Inc. and RBS Securities Inc. and their successors, provided, however, that if any of the foregoing ceases to be a primary U.S. Government securities dealer in New York City (a “Primary Treasury Dealer”), the Company will substitute another Primary Treasury Dealer and (ii) any other Primary Treasury Dealers appointed by the Company.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time on the third business day preceding such redemption date.

Notice of any redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each holder of Notes to be redeemed.

Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Notes or portions thereof called for redemption.

If less than all of the Notes then outstanding are to be redeemed, the Notes to be redeemed shall be selected by DTC (as defined below), in the case of Notes represented by a Global Security, or by the Trustee by a method that the Trustee deems to be fair and appropriate, in the case of Notes that are not represented by a Global Security.

- (h) not applicable;
- (i) the Notes shall be issuable in denominations of \$2,000 and integral multiples of \$1,000 in excess of \$2,000;
- (j) not applicable;
- (k) not applicable;

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- (l) not applicable;
- (m) not applicable;
- (n) the Notes shall be subject to Sections 13.2 (Defeasance) and 13.3 (Covenant Defeasance) of the Indenture;
- (o) (a) the Notes shall be issued in the form of one or more Global Securities; (b) the Depository for such Global Securities shall be The Depository Trust Company (“DTC”); and (c) the procedures with respect to transfer and exchange of Global Securities shall be as set forth in the Indenture;
- (p) not applicable;

(i) Change of Control Offer

If a Change of Control Triggering Event (as defined below) occurs, unless the Company has exercised its option to redeem the Notes in accordance with Section 1.1(g) above, the Company shall be required to make an offer (a "Change of Control Offer") to each Holder of the Notes to repurchase all or any part (equal to \$2,000 or integral multiples of \$1,000 in excess thereof) of that Holder's Notes on the terms set forth in the Notes. In a Change of Control Offer, the Company shall be required to offer payment in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest, if any, on the Notes repurchased to, but not including, the date of repurchase (a "Change of Control Payment"). Within 30 days following any Change of Control Triggering Event or, at the Company's option, prior to any Change of Control (as defined below), but after public announcement of the transaction that constitutes or may constitute the Change of Control, a notice shall be mailed to Holders of the Notes describing the transaction that constitutes or may constitute the Change of Control Triggering Event and offering to repurchase such Notes on the date specified in the applicable notice, which date shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed (a "Change of Control Payment Date"). The notice shall, if mailed prior to the date of consummation of the Change of Control, state that the Change of Control Offer is conditioned on the Change of Control Triggering Event occurring on or prior to the applicable Change of Control Payment Date.

On each Change of Control Payment Date, the Company shall, to the extent lawful:

(A) accept for payment all Notes or portions of Notes properly tendered pursuant to the applicable Change of Control Offer;

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(B) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(C) deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being repurchased.

The Company shall not be required to make a Change of Control Offer upon the occurrence of a Change of Control Triggering Event if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by the Company and the third party purchases all Notes properly tendered and not withdrawn under its offer. In addition, the Company shall not repurchase any Notes if there has occurred and is continuing on the Change of Control Payment Date an Event of Default, other than a default in the payment of the Change of Control Payment upon a Change of Control Triggering Event.

The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act, and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control Triggering Event. To the extent that the provisions of any such securities laws or regulations conflict with the Change of Control Offer provisions of the Notes, the Company shall comply with those securities laws and regulations and shall not be deemed to have breached its obligations under the Change of Control Offer provisions herein by virtue of any such conflict.

(ii) Limitations on Liens

The Company will not at any time create, incur, assume or guarantee, and will not cause, suffer or permit a Restricted Subsidiary (as defined below) to create, incur, assume or guarantee, any Secured Debt (as defined below) without making effective provision (and the Company covenants that in such case it will make or cause to be made effective provision) whereby the Securities then outstanding and any other indebtedness of or guaranteed by the Company or such Restricted Subsidiary then entitled thereto, subject to applicable priorities of payment, shall be secured by the Security Interest (as defined below) or guaranty securing such Secured Debt equally and ratably with (or, at the Company's option, prior to) any and all other obligations and indebtedness thereby secured, so long as any such Secured Debt remains outstanding, provided, however, that the foregoing covenants shall not be applicable to the following:

(A) (1) Any Security Interest upon any property hereafter acquired or constructed by the Company or a Restricted Subsidiary and created

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contemporaneously with, or within 12 months after, such acquisition or construction to secure or provide for the payment of all or any part of the purchase price of such property or the cost of construction thereof, as the case may be; or (2) the acquisition of property subject to any Security Interest upon such property existing at the time of acquisitions thereof, whether or not the obligation secured thereby is assumed by the Company or such Restricted Subsidiary; or (3) any Security Interest existing on the property or on the outstanding shares of indebtedness of a corporation at the time such corporation shall become a Restricted Subsidiary or arising after such corporation becomes a Restricted Subsidiary pursuant to contractual commitments entered into prior to and not in contemplation of such corporation becoming a Restricted Subsidiary; or (4) any Security Interest on property of a corporation (x) existing at the time such corporation is merged into or consolidated with the Company or a Restricted Subsidiary, (y) existing at the time of a sale, lease or other disposition of the properties of a corporation or firm as an entirety or substantially as an entirety to the Company or a Restricted Subsidiary, or (z) arising after a transaction described in (x) or (y) of this clause (4) pursuant to contractual commitments entered into prior to and not in contemplation of such transaction; provided in each case that any such Security Interest does not attach to or affect property owned by the Company or a Restricted Subsidiary prior to such acquisition or construction (except the real property on which any property so constructed is physically located, in the case of any such construction) or to other property thereafter acquired or constructed other than additions to such acquired or constructed property; or

(B) Mechanics', materialmen's, carriers' or other like liens, arising in the ordinary course of businesses; or

(C) Any Security Interest arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulations as a condition to the transaction of any business, or the exercise of any privilege or license; or

(D) Liens of taxes or assessments for the then current year not at the time due, or the liens of taxes or assessments already due but the validity of which is being contested in good faith and against which adequate reserves have been established; or

(E) Judgment liens, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed; or

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(F) Leases, and, so long as the rent secured thereby is not in default, landlords' liens on fixtures and movable property located on premises leased in the ordinary course of business; or

(G) Security Interests arising in connection with contracts with or made at the request of the United States of America or any department or agency thereof, insofar as such Security Interests relate to property manufactured, installed or constructed by or to be supplied by, or property furnished to, the Company or a Restricted Subsidiary pursuant to, or to enable the performance of such contracts, or property the manufacture, installation, construction or acquisition of which is financed by the United States of America or any department or agency thereof pursuant to, or to enable the performance of, such contracts; or

(H) Security Interests in property of the Company or a Restricted Subsidiary in favor of the United States of America or any state thereof or any foreign government, or any department, agency or instrumentally or political subdivision of any thereof, to secure partial progress, advance or other payments pursuant to any contract or statute or to secure any indebtedness incurred for the purpose of financing all or any part of the purchase price or the cost of construction of the property subject to such Security Interests; or

(I) Any Security Interest in favor of the United States of America, or any state, country or local government, or to any agency thereof, in connection with the financing of a Principal Property (as defined below) (including without limitation, any such Principal Property designed primarily for the purpose of pollution control), and any transfers of title to any such Principal Property or Security Interest in any such Principal Property, in favor of such government or governmental agency in each case as are necessary or appropriate to permit the acquisition, construction, attachment or removal of such Principal Property; provided that such transfer of title and the lien of any such Security Interest does not apply to any other assets now or hereafter owned by the Company or any Restricted Subsidiary; or

(J) Any extension, renewal or replacement (or successive extensions, renewals or replacements) in whole or in part of any Security Interest referred to in the foregoing subparagraphs (A) through (I), inclusive, provided that the principal amount of Secured Debt secured thereby shall not exceed the principal amount outstanding at the time of such extension, renewal or replacement, and that such extension, renewal or replacement shall be limited to the property which secured the Security Interest so extended, renewed or replaced and additions to such property.

Notwithstanding the foregoing provisions, the Company and any one or more Restricted Subsidiaries may issue, assume or guarantee Secured Debt which

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would otherwise be subject to the foregoing restrictions in an aggregate amount which, together with all other Secured Debt of the Company and its Restricted Subsidiaries which would otherwise be subject to the foregoing restrictions (not including Secured Debt permitted to be secured under subparagraphs (A) through (I), inclusive, above) and the aggregate value of the Sale and Leaseback Transactions in existence at such time (not including Sale and Leaseback Transactions the proceeds of which have been or will be applied in accordance with subparagraph (B) of Section 1.1(q)(iii) below), does not at the time exceed 10% of Consolidated Net Tangible Assets (as defined below).

(iii) Limitations on Sale and Leaseback Transactions

The Company will not, and will not permit any Restricted Subsidiary to, engage in any Sale and Leaseback Transaction (as defined below), unless:

(A) the Company or such Restricted Subsidiary would be entitled, pursuant to the provisions of Section 1.1(q)(ii) hereof (without reference to subparagraphs (A) through (J) thereof), to incur Secured Debt equal in amount to the amount realized or to be realized upon such sale or transfer secured by a Security Interest on the property to be leased without equally and ratably securing the Securities; or

(B) the Company or a Restricted Subsidiary shall apply, within 120 days after such sale or transfer, an amount equal to the value of the property so leased to (1) the purchase or construction of properties, facilities or equipment used for operating purposes or (2) the retirement of other Funded Debt (as defined below) of the Company or of any Restricted Subsidiary (other than any Funded Debt owed to the Company or any Restricted Subsidiary); provided, however, that the amount to be applied to the retirement of Funded Debt of the Company shall be reduced by the sum of (x) the principal amount of any Securities delivered within 120 days after such sale or transfer to the Trustee for retirement and cancellation and (y) the principal amount of Funded Debt, other than Securities, voluntarily retired by the Company within 120 days after such sale or transfer. Notwithstanding the foregoing, no retirement of Funded Debt pursuant to clause (B)(2) of this Section 1.1(q)(iii) may be effected by payment at maturity or pursuant to any mandatory sinking fund payment or any mandatory prepayment provision.

The term “value” shall mean with respect to a Sale and Leaseback Transaction, as of any particular time, the amount equal to the greater of (x) the net proceeds of the sale of the property leased pursuant to such Sale and Leaseback Transaction or (y) the fair value of such property at the time of entering into such Sale and Leaseback Transaction, as determined by the Board of Directors, in either case divided first by the number of full years of such term remaining at the time of

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determination, without regard to any renewal or extension options contained in the lease.

(iv) Limitations on Transfer of a Principal Property to an Unrestricted Subsidiary

The Company will not itself, and will not permit any Restricted Subsidiary to, transfer (whether by merger, consolidation or otherwise) any Principal Property to any Unrestricted Subsidiary (as defined below), unless it shall, within 120 days of the effective date of such transfer, apply an amount equal to the fair value of such property at the time of such transfer, as determined by the Board of Directors, to (A) the purchase or construction of properties, facilities or equipment used for operating purposes or (B) the retirement of other Funded Debt of the Company or of any Restricted Subsidiary (other than any Funded Debt owed to the Company or any Restricted Subsidiary); provided, however, that the amount to be applied to the retirement of Funded Debt of the Company shall be reduced by the sum of (x) the principal amount of any Securities delivered within 120 days after such sale or transfer to the Trustee for retirement and cancellation and (y) the principal amount of Funded Debt, other than Securities, voluntarily retired by the Company within 120 days after such sale or transfer. Notwithstanding the foregoing, no retirement of Funded Debt pursuant to clause (B) of this Section 1.1(q)(iv) may be effected by payment at maturity or pursuant to any mandatory sinking fund payment or any mandatory prepayment provisions.

(v) Definitions

For purposes of this Section 1.1(q):

“Change of Control” shall mean the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or more series of related transactions, of all or substantially all of the Company’s assets and the assets of the Company’s Subsidiaries, taken as a whole, to any Person (as defined below), other than the Company or one of the Company’s Subsidiaries (as defined below); (ii) the consummation of any transaction (including, without limitation, any merger or consolidation) the result of which is that any Person becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act), directly or indirectly, of more than 50% of the Company’s outstanding Voting Stock (as defined below) or other Voting Stock into which the Company’s Voting Stock is reclassified, consolidated, exchanged or changed, measured by voting power rather than number of shares; (iii) the Company consolidates with, or merges with or into, any Person, or any Person consolidates with, or merges with or into, the Company, in any such event pursuant to a transaction in which any of the Company’s outstanding Voting Stock or the Voting Stock of such other Person is converted into or exchanged for cash, securities or other property, other than any

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such transaction where the shares of the Company’s Voting Stock outstanding immediately prior to such transaction constitute, or are converted into or exchanged for, a majority of the Voting Stock of the surviving Person or any direct or indirect parent company of the surviving Person immediately after giving effect to such transaction; (iv) the first day on which a majority of the members of the Company’s Board of Directors are not Continuing Directors (as defined below); or (v) the adoption of a plan relating to the Company’s liquidation or dissolution. The term “Person,” as used in this definition, has the meaning given thereto in Section 13(d)(3) of the Exchange Act. Notwithstanding the foregoing, a transaction will not be deemed to involve a Change of Control if (i) the Company becomes a direct or indirect wholly-owned subsidiary of a holding company and (ii)(A) the direct or indirect holders of the Voting Stock of such holding company immediately following that transaction are substantially the same as the holders of the outstanding Voting Stock of the Company immediately prior to that transaction or (B) immediately following that transaction no person (other than a holding company satisfying the requirements of this sentence) is the beneficial owner, directly or indirectly, of more than 50% of the Voting Stock of such holding company.

“Change of Control Triggering Event” means the occurrence of both a Change of Control and a Rating Event.

“Consolidated Net Tangible Assets” means the aggregate amount of assets (less applicable reserves and other property deductible items) after deducing therefrom (A) all current liabilities (excluding any constituting Funded Debt by reason of such Funded Debt being renewable or extendible) and (B) all goodwill, trade names, trademarks, patents, unamortized debt discount and expenses and other like intangibles, all as set forth on the most recent balance sheet of the Company and its consolidated Subsidiaries and computed in accordance with generally accepted account principles.

“Continuing Directors” means, as of any date of determination, any member of the Company’s Board of Directors who (A) was a member of such Board of Directors on the date the Notes were issued or (B) was nominated for election, elected or appointed to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination, election or appointment (either by a specific vote or by approval of the Company’s proxy statement in which such member was named as a nominee for election as a director, without objection to such nomination).

“Fitch” means Fitch, Inc., and its successors.

“Funded Debt” means all indebtedness for money borrowed having a maturity of more than one year from the date of the most recent balance sheet of the



Company and its consolidated Subsidiaries or having a maturity of less than one year but by its terms being renewable or extendible beyond one year from the date of such balance sheet at the option of the borrower.

“Investment Grade” means a rating equal to or higher than BBB- (or the equivalent) by Fitch, Baa3 (or the equivalent) by Moody’s (as defined below) and BBB- (or the equivalent) by S&P (as defined below), and the equivalent investment grade credit rating from any replacement rating agency or rating agencies selected by the Company.

“Moody’s” means Moody’s Investors Service, Inc., and its successors.

“Principal Property” means any manufacturing plant or manufacturing facility, warehouse, office building or other operating facility located within the United States, and any equipment located in any such plant or facility (together with the land on which such plant or facility is erected and fixtures comprising a part of such plant or facility), owned or leased by the Company or by one or more of the Company’s Restricted Subsidiaries on or acquired or leased by the Company or by one or more of the Company’s Restricted Subsidiaries after September 20, 2010, other than any such principal property that the Company’s Board of Directors declares not to be of material importance to the overall business that the Company and its Restricted Subsidiaries conduct, taken as a whole.

“Rating Agencies” means (A) each of Fitch, Moody’s and S&P; and (B) if any of Fitch, Moody’s or S&P ceases to rate the Notes or fails to make a rating of the Notes publicly available for reasons outside of the Company’s control, a “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Company (as certified by a resolution of the Company’s Board of Directors) as a replacement agency for Fitch, Moody’s or S&P, or all of them, as the case may be.

“Rating Event” means a decrease in the ratings of the Notes below Investment Grade by at least two of the three Rating Agencies on any date from the date that is 60 days prior to the date of the first public notice of an arrangement that could result in a Change of Control until the end of the 60-day period following the consummation of such Change of Control (which period shall be extended so long as the rating of the Notes is under publicly announced consideration for possible downgrade by any of the Rating Agencies).

“Restricted Subsidiary” means (A) any Subsidiary (as defined below) other than an Unrestricted Subsidiary and (B) any Subsidiary which was an Unrestricted Subsidiary but which, subsequent to the date hereof, is designated by the Company (by certified resolution of the Board of Directors delivered to the Trustee) to be a Restricted Subsidiary; provided, however, that the Company may

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not designate any such Subsidiary to be a Restricted Subsidiary if the Company would thereby breach any covenant or agreement herein contained.

“Sale and Leaseback Transaction” means any sale or transfer made by the Company or one or more Restricted Subsidiaries (except a sale or transfer made to the Company or one or more Restricted Subsidiaries) of any Principal Property which has been in full operation for more than 120 days prior to such sale or transfer, if such sale or transfer is made with the intention of, or as part of an arrangement involving, the lease of such Principal Property to the Company or a Restricted Subsidiary (except a lease for a period not exceeding 36 months, made with the intention that the use of the leased Principal Property by the Company or such Restricted Subsidiary will be discontinued on or before the expiration of such period).

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., and its successors.

“Secured Debt” means any indebtedness for money borrowed by the Company or a Restricted Subsidiary, and any other indebtedness of the Company or a Restricted Subsidiary on which by the terms of such indebtedness interest is paid or payable (other than indebtedness owned by a Restricted Subsidiary to the Company, by a Restricted Subsidiary to another Restricted Subsidiary or by the Company to a Restricted Subsidiary), which in any such case is by its terms secured by (A) a Security Interest in any Principal Property or (B) a Security Interest in any shares of stock or indebtedness of a Restricted Subsidiary or (C) in the case of any such indebtedness of the Company, a guaranty by any Restricted Subsidiary.

“Security Interest” means any mortgage, pledge, lien, encumbrance or other security interest which secures payment or performance of an obligation.

“Subsidiary” means any corporation of which the Company, or the Company and one or more Subsidiaries, or any one or more Subsidiaries, directly or indirectly owns or own voting securities entitling the holders thereof to elect a majority of the directors, either at all times or so long as there is no default or contingency which permits the holders of any other class or classes of securities to vote for the election of one or more directors.

“Unrestricted Subsidiary” means (A) any Subsidiary acquired or organized after the date hereof, provided, however, that such Subsidiary is not a successor, directly or indirectly, to any Restricted Subsidiary, (B) any Subsidiary the principal business and assets of which are located outside the United States of America, its territories and possessions and (C) any Subsidiary substantially all the assets of which consist of stock or other securities of a Subsidiary or Subsidiaries of the character described in clauses (A) and (B) of this paragraph, in

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each case unless and until any such Subsidiary shall have been designated to be a Restricted Subsidiary pursuant to clause (B) of the definition of “Restricted Subsidiary.”

“Voting Stock” means, with respect to any specified “Person” (as that term is used in Section 13(d)(3) of the Exchange Act) as of any date, the capital stock of such Person that is at the time entitled to vote generally in the election of the board of directors of such Person.

(r) not applicable.

ARTICLE II  
MISCELLANEOUS

Section 2.1. *Effect of Supplemental Indenture.* Upon the execution and delivery of this Supplemental Indenture by the Company and the Trustee, the Indenture shall be modified in accordance herewith, and this Supplemental Indenture shall form a part of the Indenture for all purposes; and every Holder of Securities heretofore or hereafter authenticated and delivered under the Indenture shall be bound thereby.

Section 2.2. *Indenture Remains in Full Force and Effect.* Except as supplemented and amended hereby, all provisions in the Indenture shall remain in full force and effect.

Section 2.3. *Indenture and Supplemental Indenture Construed Together.* This Supplemental Indenture is an indenture supplemental to and in implementation of the Indenture, and the Indenture and this Supplemental Indenture shall henceforth be read and construed together.

Section 2.4. *Confirmation of Indenture.* The Indenture, as supplemented and amended by this Supplemental Indenture, is in all respects confirmed and ratified.

Section 2.5. *Conflict with Trust Indenture Act.* If any provision of this Supplemental Indenture limits, qualifies or conflicts with another provision hereof which is required to be included in this Supplemental Indenture by any of the provisions of the Trust Indenture Act, such required provision shall control.

Section 2.6. *Separability.* In case any one or more of the provisions contained in this Supplemental Indenture shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 2.7. *Successors and Assigns.* All agreements in this Supplemental Indenture shall be binding upon and inure to the benefit of the respective successors and assigns of the Company and the Trustee.

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Section 2.8. *Certain Duties and Responsibilities of the Trustee.* In entering into this Supplemental Indenture, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee, whether or not elsewhere herein so provided. The Trustee, for itself and its successor or successors, accepts the terms of the Indenture as amended by this Supplemental Indenture, and agrees to perform the same, but only upon the terms and provisions defining and limiting the liabilities and responsibilities of the Trustee, which terms and provisions shall in like manner define and limit its liabilities and responsibilities in the performance of the trust created by the Indenture. The Trustee makes no representations as to the validity or sufficiency of this Supplemental Indenture other than as to the validity of its execution and delivery by the Trustee. The recitals and statements herein are deemed to be those of the Company and not of the Trustee.

Section 2.9. *Governing Law.* This Supplemental Indenture shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to conflicts of laws principles thereof.

Section 2.10. *Counterparts.* This Supplemental Indenture may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, as of the day and year first written above.

HARSCO CORPORATION

By: /s/ Mark E. Kimmel

Name: Mark E. Kimmel

Title: Senior Vice President, Chief

Administrative Officer, General

Counsel and Corporate Secretary

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Trustee

By: /s/ Martin Reed

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Name: Martin Reed  
Title: Vice President

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THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE TRANSFERRED TO, OR REGISTERED OR EXCHANGED FOR SECURITIES REGISTERED IN THE NAME OF, ANY PERSON OTHER THAN THE DEPOSITARY OR A NOMINEE THEREOF AND NO SUCH TRANSFER MAY BE REGISTERED, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE. EVERY SECURITY AUTHENTICATED AND DELIVERED UPON REGISTRATION OF TRANSFER OF, OR IN EXCHANGE FOR OR IN LIEU OF, THIS SECURITY SHALL BE A GLOBAL SECURITY SUBJECT TO THE FOREGOING, EXCEPT IN SUCH LIMITED CIRCUMSTANCES.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the Company or its agents for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

HARSCO CORPORATION

Form of 2.700% Senior Notes due 2015

No.

CUSIP No. 415864 AK3

\$250,000,000

Harsco Corporation, a corporation duly organized and existing under the laws of Delaware (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of TWO HUNDRED FIFTY MILLION DOLLARS on October 15, 2015, and to pay interest thereon from September 20, 2010 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on April 15 (or the first Business Day thereafter if April 15 is not a Business Day) and October 15 (or the first Business Day thereafter if October 15 is not a Business Day) in each year, commencing April 15, 2011, at the rate of 2.700% per annum on the basis of a 360-day year consisting of twelve 30-day months, until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the April 1 or October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or

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one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

Payment of the principal of (and premium, if any) and any such interest on this Security will be made at the office or agency of the Company maintained for that purpose in New York City, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of interest may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

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IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

Dated:

HARSCO CORPORATION

By: \_\_\_\_\_  
Name:  
Title:

Attest:

By: \_\_\_\_\_  
Name:  
Title:

This is one of the Securities of the series designated therein referred to in the within-mentioned Indenture.

Wells Fargo Bank, National Association, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

Dated:

*(Signature Page to Global Security)*

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HARSCO CORPORATION

FORM OF 2.700% SENIOR NOTES DUE 2015

This Security is one of a duly authorized issue of securities of the Company (herein called the "Securities"), issued and to be issued in one or more series under an Indenture, dated as of September 20, 2010 (herein called the "Indenture"), between the Company and Wells Fargo Bank, National Association, as Trustee (herein called the "Trustee," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security is one of the series designated on the face hereof.

The Securities of this series are subject to redemption, in whole or in part, at the Company's option, at any time and from time to time at a redemption price equal to the greater of (i) 100% of the principal amount of the Securities to be redeemed and (ii) the sum of the present values of the remaining scheduled payments of principal and interest thereon discounted to the redemption date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate as defined below, plus 20 basis points, plus accrued interest thereon to the date of redemption.

The Company will mail notice of any redemption to holders of the Securities to be redeemed at their addresses, as shown in the security register for the Securities, at least 30 days but not more than 60 days before the redemption date. The notice of redemption will specify, among other items, the date fixed for redemption, the redemption price and the aggregate principal amount of the Securities to be redeemed.

Unless the Company defaults in payment of the redemption price, on and after the redemption date, interest will cease to accrue on the Securities or portions thereof called for redemption. If less than all of the Securities are to be redeemed, the Securities to be redeemed shall be selected by lot by DTC, in the case of Securities represented by a global security, or by the Trustee by a method that the Trustee deems to be fair and appropriate, in the case of Securities that are not represented by a global security.

For purposes of the optional redemption provisions of the Securities, the following terms will be applicable:

"Treasury Rate" means, with respect to any redemption date, the rate per annum equal to the semiannual equivalent yield to a maturity of the Comparable Treasury Issue, assuming a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount equal to the Comparable Treasury Price for such redemption date).

"Comparable Treasury Issue" means the United States Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Securities to be redeemed that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the remaining term of such Securities.

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"Comparable Treasury Price" means, with respect to any redemption date, (i) the average of four Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (ii) if the Trustee obtains fewer than six such Reference Treasury Dealer Quotations, the average of all such Quotations, or (iii) if only one Reference Dealer Quotation is received, such quotation.

"Independent Investment Banker" means one of the Reference Treasury Dealers that the Company appoints.

"Reference Treasury Dealer" means (i) Citigroup Global Markets Inc. and RBS Securities Inc. and their successors, provided, however, that if any of the foregoing ceases to be a primary U.S. Government securities dealer in New York City (a "Primary Treasury Dealer"), the Company will substitute another Primary Treasury Dealer and (ii) any other Primary Treasury Dealers appointed by the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer and any redemption date, the average, as determined by the Trustee, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third business day preceding such redemption date.

In the event of redemption or conversion of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed or unconverted portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture provides that the Company may be required to offer to purchase the Securities at a purchase price equal to 101% of their principal amount, plus accrued and unpaid interest, upon the occurrence of a Change of Control Triggering Event.

The Indenture contains provisions for defeasance at any time of (1) the entire indebtedness of this Security or (2) certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.

If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities of each series to be affected under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Securities at the time Outstanding of each series to be affected. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Securities of each series at the time Outstanding, on behalf of the Holders of all Securities of such series, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of

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this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity reasonably satisfactory to the Trustee and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and premium, if any) and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company or the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be

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overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

All terms used in this Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

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**HARSCO CORPORATION**  
**CERTIFICATION PURSUANT TO RULE 13a-14(a) AND 15d-14(a)**  
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Salvatore D. Fazzolari, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Harsco Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 4, 2010

/s/ Salvatore D. Fazzolari

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Salvatore D. Fazzolari  
Chief Executive Officer

**HARSCO CORPORATION**  
**CERTIFICATION PURSUANT TO RULE 13a-14(a) AND 15d-14(a)**  
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Stephen J. Schnoor, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Harsco Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 4, 2010

/s/ Stephen J. Schnoor

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Stephen J. Schnoor  
Chief Financial Officer

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**HARSCO CORPORATION**  
**CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350,**  
**AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of Harsco Corporation (the "Company") on Form 10-Q for the period ending September 30, 2010 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), we certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of our knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 4, 2010

/s/ Salvatore D. Fazzolari

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Salvatore D. Fazzolari  
Chief Executive Officer

/s/ Stephen J. Schnoor

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Stephen J. Schnoor  
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Harsco Corporation and will be retained by Harsco Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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