

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 10-Q

(Mark One)

Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934
For the quarterly period ended June 28, 2008

or

Transition Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission file number 1-10948

Office Depot, Inc.

(Exact name of registrant as specified in its charter)

Office DEPOT

Delaware

(State or other jurisdiction of
incorporation or organization)

59-2663954
(I.R.S. Employer
Identification No.)

2200 Old Germantown Road; Delray Beach, Florida
(Address of principal executive offices)

33445
(Zip Code)

(561) 438-4800

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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 is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
(Do not check if a 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

The number of shares outstanding of the registrant's common stock, as of the latest practicable date: At June 28, 2008 there were 274,989,950 outstanding shares of Office Depot, Inc. Common Stock, \$0.01 par value.

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PART I. FINANCIAL INFORMATION**Item 1. Financial Statements**

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)
(Unaudited)

	As of June 28, 2008	As of December 29, 2007	As of June 30, 2007
Assets			
Current assets:			
Cash and cash equivalents	\$ 156,607	\$ 222,954	\$ 122,695
Receivables, net	1,471,710	1,511,681	1,466,714
Inventories	1,647,044	1,717,662	1,586,241
Deferred income taxes	99,398	120,162	64,474
Prepaid expenses and other current assets	166,247	143,255	148,295
Total current assets	3,541,006	3,715,714	3,388,419
Property and equipment, net	1,695,581	1,588,958	1,463,361
Goodwill	1,391,656	1,282,457	1,228,681
Other intangible assets	110,964	107,987	108,696
Other assets	579,175	561,424	439,579
Total assets	<u>\$7,318,382</u>	<u>\$ 7,256,540</u>	<u>\$ 6,628,736</u>
Liabilities and stockholders' equity			
Current liabilities:			
Trade accounts payable	\$1,398,321	\$ 1,591,154	\$ 1,582,487
Accrued expenses and other current liabilities	1,148,041	1,170,775	1,095,197
Income taxes payable	13,063	3,491	2,167
Short-term borrowings and current maturities of long-term debt	296,884	207,996	68,878
Total current liabilities	2,856,309	2,973,416	2,748,729
Deferred income taxes and other long-term liabilities	579,371	576,254	534,679
Long-term debt, net of current maturities	615,653	607,462	564,107
Minority interest	5,255	15,564	14,737
Commitments and contingencies			
Stockholders' equity:			
Common stock — authorized 800,000,000 shares of \$.01 par value; issued and outstanding shares - 280,962,284 in 2008, 428,777,625 in December 2007 and 428,553,951 in June 2007	2,810	4,288	4,286
Additional paid-in capital	1,177,644	1,784,184	1,757,070
Accumulated other comprehensive income	587,649	495,916	340,551
Retained earnings	1,551,979	3,783,805	3,647,543
Treasury stock, at cost — 5,972,334 shares in 2008, 155,819,358 shares in December 2007 and 155,784,207 shares in June 2007	(58,288)	(2,984,349)	(2,982,966)
Total stockholders' equity	<u>3,261,794</u>	<u>3,083,844</u>	<u>2,766,484</u>
Total liabilities and stockholders' equity	<u>\$7,318,382</u>	<u>\$ 7,256,540</u>	<u>\$ 6,628,736</u>

This report should be read in conjunction with the Notes to Condensed Consolidated Financial Statements ("Notes") herein and the Notes to Consolidated Financial Statements in the Office Depot, Inc. Form 10-K filed February 26, 2008 (the "2007 Form 10-K").

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF EARNINGS
(In thousands, except per share amounts)
(Unaudited)

	<u>13 Weeks Ended</u>		<u>26 Weeks Ended</u>	
	<u>June 28, 2008</u>	<u>June 30, 2007</u>	<u>June 28, 2008</u>	<u>June 30, 2007</u>
Sales	\$3,605,073	\$3,631,599	\$7,567,090	\$7,725,199
Cost of goods sold and occupancy costs	<u>2,621,557</u>	<u>2,535,480</u>	<u>5,414,894</u>	<u>5,359,972</u>
Gross profit	983,516	1,096,119	2,152,196	2,365,227
Store and warehouse operating and selling expenses	811,694	799,494	1,678,500	1,685,186
General and administrative expenses	175,224	149,788	373,774	311,318
Amortization of deferred gain on building sale	<u>(1,873)</u>	<u>(1,873)</u>	<u>(3,746)</u>	<u>(3,746)</u>
Operating profit (loss)	(1,529)	148,710	103,668	372,469
Other income (expense):				
Interest income	5,604	1,241	6,509	2,101
Interest expense	(14,406)	(18,031)	(29,226)	(30,671)
Miscellaneous income, net	<u>6,502</u>	<u>9,874</u>	<u>14,943</u>	<u>19,695</u>
Earnings (loss) before income taxes	(3,829)	141,794	95,894	363,594
Income taxes	<u>(1,827)</u>	<u>36,212</u>	<u>29,123</u>	<u>104,241</u>
Net earnings (loss)	<u>\$ (2,002)</u>	<u>\$ 105,582</u>	<u>\$ 66,771</u>	<u>\$ 259,353</u>
Earnings (loss) per common share:				
Basic	\$ (0.01)	\$ 0.39	\$ 0.24	\$ 0.95
Diluted	(0.01)	0.38	0.24	0.93
Weighted average number of common shares outstanding:				
Basic	272,845	271,879	272,620	273,690
Diluted	273,362	275,952	273,101	278,041

This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2007 Form 10-K.

OFFICE DEPOT, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	26 Weeks Ended	
	June 28, 2008	June 30, 2007
Cash flow from operating activities:		
Net earnings	\$ 66,771	\$ 259,353
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	130,390	139,609
Charges for losses on inventories and receivables	64,678	47,335
Changes in working capital and other	<u>(124,098)</u>	<u>(153,134)</u>
Net cash provided by operating activities	<u>137,741</u>	<u>293,163</u>
Cash flows from investing activities:		
Capital expenditures	(206,840)	(225,330)
Acquisitions, net of cash acquired, and related payments	(84,659)	(47,591)
Release of restricted cash	18,100	—
Purchase of assets sold and held for sale	(39,772)	—
Proceeds from assets sold and other	<u>36,781</u>	<u>83,290</u>
Net cash used in investing activities	<u>(276,390)</u>	<u>(189,631)</u>
Cash flows from financing activities:		
Proceeds from exercise of stock options and sale of stock under employee stock purchase plans	855	25,294
Tax benefits from employee share-based payments	56	11,625
Acquisition of treasury stock under approved repurchase plans	—	(199,592)
Treasury stock additions from employee related plans	(944)	(9,801)
Net proceeds on long- and short-term borrowings	<u>69,279</u>	<u>16,674</u>
Net cash provided by (used in) financing activities	<u>69,246</u>	<u>(155,800)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>3,056</u>	<u>1,411</u>
Net decrease in cash and cash equivalents	(66,347)	(50,857)
Cash and cash equivalents at beginning of period	<u>222,954</u>	<u>173,552</u>
Cash and cash equivalents at end of period	<u>\$ 156,607</u>	<u>\$ 122,695</u>

This report should be read in conjunction with the Notes herein and the Notes to Consolidated Financial Statements in the 2007 Form 10-K.

OFFICE DEPOT, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note A — Basis of Presentation

Office Depot, Inc., including consolidated subsidiaries, is a global supplier of office products and services. Fiscal years are based on a 52- or 53-week period ending on the last Saturday in December. The Condensed Consolidated Balance Sheet at December 29, 2007 has been derived from audited financial statements at that date. The condensed interim financial statements as of June 28, 2008 and for the 13-week and 26-week periods ended June 28, 2008 (also referred to as “the second quarter of 2008” and “the first half of 2008”) and June 30, 2007 (also referred to as “the second quarter of 2007” and “the first half of 2007”) are unaudited. However, in our opinion, these financial statements reflect adjustments (consisting only of normal, recurring items) necessary to provide a fair presentation of our financial position, results of operations and cash flows for the periods presented. In addition to the normal, recurring items recorded for interim financial statement presentation, we recognized expenses associated with exit and other activities because the related accounting criteria were met during the period. We have included the balance sheet from June 30, 2007 to assist in analyzing our company.

These interim results are not necessarily indicative of the results that should be expected for the full year. For a better understanding of Office Depot, Inc. and its financial statements, we recommend reading these condensed interim financial statements in conjunction with the audited financial statements for the year ended December 29, 2007, which are included in our 2007 Annual Report on Form 10-K (the “2007 Form 10-K”), filed with the U. S. Securities and Exchange Commission (“SEC”).

Cash Management: Our cash management process generally utilizes zero balance accounts which provide for the settlement of the related disbursement accounts on a daily basis. Accounts payable as of June 28, 2008, December 29, 2007 and June 30, 2007 included \$92 million, \$127 million and \$216 million, respectively, of amounts not yet presented for payment drawn in excess of disbursement account book balances, after considering existing offset provisions. We borrow on a cost effective basis during the quarter, which may result in higher levels of borrowings and invested cash within the period. At the end of the quarter, cash may be used to minimize borrowings outstanding at the balance sheet date.

New Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (“FASB”) issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* (“FAS 157”). This Standard defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. FAS 157 is effective for fiscal years beginning after November 15, 2007 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in financial statements. Certain aspects of this Standard were effective at the beginning of the first quarter of 2008 and had no impact on the company. In November 2007, the FASB provided a one year deferral for the implementation of FAS 157 for other nonfinancial assets and liabilities. We do not anticipate that the adoption of the deferred portion of FAS 157 will have a material impact on our financial condition, results of operations or cash flows.

The FASB also issued in September 2006 Statement of Financial Accounting Standards No. 158, *Employers’ Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statement No. 87, 88, 106 and 132(R)* (“FAS 158”). This Standard prescribes two phases of implementation. In the first phase, which we adopted in 2006, deferred pension gains and losses are reflected in accumulated other comprehensive income. The second phase of FAS 158 requires that the valuation date of plan accounts be as of the end of the fiscal year, with that change required to be

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implemented by fiscal years ending after December 15, 2008. We anticipate that the change will reduce year end 2008 retained earnings by approximately \$0.8 million at current exchange rates.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* ("FAS 141R"). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer's existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. The Standard does not address transition provisions for certain items treated differently under FAS 141 and FAS 141R. Accordingly, capitalized acquisition costs related to transactions not finalized at the time of adoption of FAS 141R will be expensed under that Standard. We are not able to currently estimate the amounts to be expensed upon adoption.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. This Standard changes the way consolidated net income is presented, requiring consolidated net income to report amounts attributable to both the parent and the noncontrolling interest but earnings per share will be based on amounts attributable to the parent. It also establishes protocol for recognizing certain ownership changes as equity transactions or gain or loss and requires presentation of noncontrolling ownership interest as a component of consolidated equity. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 160 will have on our financial condition, results of operations or cash flows.

In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* ("FAS 161"). This Standard requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity's financial position, financial performance, and cash flows. The Standard is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. As FAS 161 relates specifically to disclosures, the Standard will have no impact on our financial condition, results of operations or cash flows.

In May 2008, the FASB issued Statement of Financial Accounting Standards No. 162, *The Hierarchy of Generally Accepted Accounting Principles* ("FAS 162"). This Standard identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles. FAS 162 directs the hierarchy to the entity, rather than the independent auditors, as the entity is responsible for selecting accounting principles for financial statements that are presented in conformity with generally accepted accounting principles. The Standard is effective 60 days following SEC approval of the Public Company Accounting Oversight Board amendments to remove the hierarchy of generally accepted accounting principles from the auditing standards. FAS 162 is not expected to have an impact on our financial condition, results of operations or cash flows.

Note B — Acquisitions

In April 2008, the company and Reliance Retail Ltd, a subsidiary of Reliance Industries Ltd., through a joint venture acquired 100% of eOfficePlanet India pvt., India's leading provider of office products and services to corporate customers. The company invested approximately \$20 million in the joint venture and holds a controlling 51% interest. The joint venture is included in our International Division. Both our integration plans and our assessment of the value of assets and liabilities acquired are in the process of being finalized and implemented. Accordingly, the amount initially allocated to goodwill likely will change as the integration and valuation processes are completed. The effects of this acquisition are not considered material to our financial condition, results of operations or cash flows.

Also in April 2008, the company acquired under previously existing put options all remaining minority interest shares of its joint ventures in Israel and China for approximately \$40 million and \$22 million, respectively.

Note C — Comprehensive Income

Comprehensive income represents all non-owner changes in stockholders' equity and consists of the following:

(In thousands)

	Second Quarter		First Half	
	2008	2007	2008	2007
Net earnings (loss)	\$ (2,002)	\$105,582	\$ 66,771	\$259,353
Other comprehensive income:				
Foreign currency translation adjustments, net	15,434	31,215	104,158	45,101
Amortization of gain on cash flow hedge	(414)	(414)	(829)	(829)
Deferred pension accounts	(11,470)	—	(11,470)	—
Unrealized gain (loss) on cash flow hedge	(125)	(19)	(125)	1,026
Total comprehensive income	<u>\$ 1,423</u>	<u>\$136,364</u>	<u>\$158,505</u>	<u>\$304,651</u>

Note D — Accounting for Uncertainty in Income Taxes

We file a U.S. federal income tax return and other income tax returns in various states and foreign jurisdictions. With few exceptions, we are no longer subject to U.S. federal, state and local, or non-U.S. income tax examinations for years before 2000. Our U.S. federal filings for the years 2000 and 2002 through 2006 are under routine examination, and the U.S. federal tax returns for 2007 and 2008 are under concurrent year review. It is reasonably possible that certain of these audits will close within the next 12 months, which could result in a decrease of as much as \$14 million or an increase of as much as \$12 million to our accrued uncertain tax positions. Additionally, we anticipate that it is reasonably possible that new issues will be raised or resolved by tax authorities that may require changes to the balance of unrecognized tax benefits, however, an estimate of such changes cannot reasonably be made.

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Note E — Earnings Per Share (“EPS”)

The information related to our basic and diluted EPS is as follows:

	Second Quarter		First Half	
	2008	2007	2008	2007
<i>(In thousands, except per share amounts)</i>				
Numerator:				
Net earnings (loss)	\$ (2,002)	\$ 105,582	\$ 66,771	\$ 259,353
Denominator:				
Weighted average shares outstanding:				
Basic	272,845	271,879	272,620	273,690
Effect of dilutive stock options and restricted stock	517	4,073	481	4,351
Diluted	<u>273,362</u>	<u>275,952</u>	<u>273,101</u>	<u>278,041</u>
EPS:				
Basic	\$ (0.01)	\$ 0.39	\$ 0.24	\$ 0.95
Diluted	(0.01)	0.38	0.24	0.93

Options and nonvested shares representing 14.4 million shares of common stock were outstanding for the quarter ended June 28, 2008 but were not included in the computation of diluted earnings per share because their effect would have been antidilutive. The diluted share amount for the second quarter of 2008 is provided for informational purposes, as the net loss for the period causes basic EPS to be the most dilutive.

Note F — Division Information

Office Depot operates in three reportable segments: North American Retail Division, North American Business Solutions Division, and International Division. The following is a summary of our significant accounts and balances by reportable segment (or “Division”), reconciled to consolidated totals.

	Sales			
	Second Quarter		First Half	
	2008	2007	2008	2007
<i>(In thousands)</i>				
North American Retail Division	\$ 1,433,059	\$ 1,525,334	\$ 3,146,515	\$ 3,373,934
North American Business Solutions Division	1,064,077	1,123,242	2,168,097	2,285,592
International Division	1,107,937	983,023	2,252,478	2,065,673
Total	<u>\$ 3,605,073</u>	<u>\$ 3,631,599</u>	<u>\$ 7,567,090</u>	<u>\$ 7,725,199</u>

	Division Operating Profit (Loss)			
	Second Quarter		First Half	
	2008	2007	2008	2007
<i>(In thousands)</i>				
North American Retail Division	\$ (4,379)	\$ 99,239	\$ 78,090	\$ 251,587
North American Business Solutions Division	49,300	78,329	108,868	150,545
International Division	51,153	42,134	111,334	124,197
Total reportable segments	96,074	219,702	298,292	526,329
Eliminations	—	—	—	(73)
Total	<u>\$ 96,074</u>	<u>\$ 219,702</u>	<u>\$ 298,292</u>	<u>\$ 526,256</u>

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A reconciliation of the measure of Division operating profit to consolidated earnings (loss) before income taxes is as follows:

(In thousands)	Second Quarter		First Half	
	2008	2007	2008	2007
Total Division operating profit	\$ 96,074	\$ 219,702	\$ 298,292	\$ 526,256
Charges, as defined below	(15,536)	(11,883)	(26,280)	(23,947)
Corporate general and administrative expenses (excluding Charges)	(83,940)	(60,982)	(172,090)	(133,586)
Amortization of deferred gain	1,873	1,873	3,746	3,746
Interest income	5,604	1,241	6,509	2,101
Interest expense	(14,406)	(18,031)	(29,226)	(30,671)
Miscellaneous income, net	6,502	9,874	14,943	19,695
Earnings (loss) before income taxes	<u>\$ (3,829)</u>	<u>\$ 141,794</u>	<u>\$ 95,894</u>	<u>\$ 363,594</u>

Goodwill by Division is as follows:

(In thousands)	Goodwill		
	June 28, 2008	December 29, 2007	June 30, 2007
North American Retail Division	\$ 2,249	\$ 2,315	\$ 2,147
North American Business Solutions Division	369,195	368,628	366,993
International Division	1,020,212	911,514	859,541
Total	<u>\$1,391,656</u>	<u>\$ 1,282,457</u>	<u>\$1,228,681</u>

The change in goodwill balances compared to year end 2007 results primarily from the acquisitions completed in the second quarter of 2008, which increased goodwill by approximately \$58 million, and changes in foreign currency exchange rates on goodwill balances recorded in local functional currencies, which increased goodwill by approximately \$51 million. In addition to these drivers, the change in goodwill balances from the second quarter of last year also reflects the completion of fair value estimates on certain acquisitions made in 2006. See Note B for additional information on the acquisitions completed in 2008.

Note G — Asset Impairments, Exit Costs and Other Charges

During the third quarter of 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions (the "Charges"). This announcement followed a wide-ranging assessment of assets and commitments which began in the second quarter of 2005. Through the end of the second quarter of 2008, we had recorded \$412 million of Charges. Expenses associated with future activities will be recognized as the individual plans are implemented and the related accounting recognition criteria are met. As with any estimate, the amounts may change when expenses are incurred. We manage these costs and programs at the corporate level and, accordingly, these amounts are not included in determining Division operation profit.

During the second quarter of 2008, we recognized approximately \$16 million of Charges associated with these projects as the previously-identified plans were implemented and the related accounting recognition criteria were met. Approximately \$12 million is included in store and warehouse operating and selling expenses and approximately \$4 million is included in general and administrative expenses on our Condensed Consolidated Statement of Earnings. Implementation of projects during the quarter resulted in charges primarily for severance-related expenses and accelerated depreciation. The 2008 year to date Charges totaled approximately \$27 million, of which, \$20 million is presented in store and warehouse operating and selling expenses and approximately \$7 million is presented in general and administrative expenses.

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Charges for the second quarter of 2007 totaled approximately \$12 million, of which, \$10 million was included in store and warehouse operating and selling expenses and \$2 million was included in general and administrative expenses. Charges for the first half of 2007 totaled approximately \$24 million, of which, \$19 million was included in store and warehouse operating and selling expenses and \$5 million was included in general and administrative expenses. The second quarter and first half 2007 Charges primarily related to severance expenses and accelerated depreciation.

The following table summarizes the Charges recognized in the first half of 2008 by type of activity as well as changes in the related accrual balances.

<i>(In millions)</i>	Balance at December 29, 2007	Charges incurred	Cash payments	Non-cash settlements	Currency and other adjustments	Balance at June 28, 2008
One-time termination benefits	\$13	\$15	\$(17)	\$ (3)	\$ 1	\$ 9
Lease and contract obligations	17	—	(4)	—	(1)	12
Accelerated depreciation	—	9	—	(9)	—	—
Other associated costs	—	3	(2)	(1)	—	—
Total	\$30	\$27	\$(23)	\$(13)	\$—	\$21

During the second quarter of 2008, the company initiated a voluntary exit incentive program for certain employees. Severance expenses under this program are estimated to total \$6.9 million, the majority of which will be recognized and paid by the end of fiscal year 2008. We recognized approximately \$5.6 million of these expenses in the second quarter of 2008.

Note H — Pension Disclosures

The company has an active defined benefit pension plan covering certain employees in one International location. In April 2008, following trustee approval and notification of employees, future service benefits ceased for the remaining employees under the plan. As a result of this curtailment, a gain of approximately \$13.1 million was recognized during the second quarter, including \$11.5 million from the change in benefits and \$1.6 million from previously accrued benefits included in other comprehensive income. In addition, service cost for the quarter was adjusted so that the year to date 2008 amount equaled one half of the revised full year projected cost. The gain is presented in store and warehouse operating and selling expenses on the Condensed Consolidated Statement of Earnings and included in the International Division's operating profit.

The components of net periodic pension cost (gain) are as follows:

<i>(In millions)</i>	Second Quarter		First Half	
	2008	2007	2008	2007
Service cost	\$ (0.3)	\$ 1.3	\$ 0.6	\$ 3.1
Interest cost	3.1	2.9	6.1	5.8
Expected return on plan assets	(2.9)	(2.2)	(5.7)	(4.4)
Plan curtailment	(13.1)	—	(13.1)	—
Net periodic pension cost (gain)	\$ (13.2)	\$ 2.0	\$ (12.1)	\$ 4.5

Plan assets and obligations were revalued at the curtailment date. Giving effect to additional funding through the end of the second quarter, the net unfunded pension liability was \$62.9 million at June 28, 2008, compared to \$67.9 million at December 29, 2007. Changes in deferred actuarial gains and asset returns different from projections up to the curtailment date and curtailment-related impacts reduced other comprehensive income by approximately \$11.5 million during the second quarter of 2008. For the first half of 2008, the Company contributed approximately \$4.5 million to this plan and purchased approximately \$0.5 million of annuity contracts for a separate plan.

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In accordance with new pension accounting rules applicable to the company in the fourth quarter of 2008 (FAS 158), the pension plan valuation date will change from the currently used date of the end of October to the end of December. This change is expected to result in a charge to retained earnings of approximately \$0.8 million at current exchange rates using the proportionate measurement approach specified in that Standard.

Note I — Capital Stock

During the second quarter of 2008, we retired approximately 150 million shares of treasury stock. This was a non-cash transaction, and the reduction in the treasury stock account was offset by changes in other equity accounts. The par value of the retired shares was charged against common stock, and the excess of purchase price over par value was allocated between additional paid-in capital and retained earnings using a pro rata method. The impact of this transaction on the condensed consolidated balance sheet was to reduce common stock, additional paid-in capital, retained earnings and treasury stock by approximately \$1.5 million, \$626.9 million, \$2,298.6 million and \$2,927.0 million, respectively.

Note J — Investment in Unconsolidated Joint Venture

Since 1994, we have participated in a joint venture in Mexico, Office Depot de Mexico. Because we participate equally in this business with a partner, we account for this investment using the equity method. Our proportionate share of Office Depot de Mexico's net income or loss is presented in miscellaneous income, net in the Condensed Consolidated Statements of Earnings.

The following tables provide summarized unaudited information from the balance sheet and statement of earnings for Office Depot de Mexico:

<i>(In thousands)</i>	<u>June 28, 2008</u>	<u>December 29, 2007</u>	<u>June 30, 2007</u>
Current assets	\$238,430	\$202,188	\$227,627
Non-current assets	277,577	250,561	221,943
Current liabilities	181,816	169,592	152,561
Non-current liabilities	—	—	—

<i>(In thousands)</i>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Sales	\$227,905	\$188,692	\$454,745	\$392,397
Gross profit	66,973	55,905	130,939	112,414
Net income	17,041	14,580	34,024	31,355

Note K — Subsequent Events

During July 2008, we acquired a 51% controlling interest in AGE Kontor & Data AB, a contract and retail office supply company operating in Sweden. Under terms of the agreement, the company may purchase or be required to purchase the remaining 49% interest for \$20 million during the third quarter of 2010, or earlier under limited conditions. The business will be consolidated in our third quarter financial statements effective with the date of the acquisition and reported in the International Division.

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During the first quarter of 2008, we amended our Revolving Credit Facility (the "Amended Credit Agreement") which revised our required minimum fixed charge coverage ratio, limited our ability to make investments and acquisitions, restricted our ability to repurchase shares of company common stock and limited the amount of borrowings or liens the company can incur. Based on current projected operating results, the company anticipates remaining in compliance with all of the restrictive covenants, though the margin of coverage for the fixed charge coverage ratio, which is a trailing four quarter calculation, is projected to be at its lowest point at the end of the third quarter of 2008. If actual operating results for the third quarter are lower than expected, we may be in noncompliance with the Amended Credit Agreement as of the end of the third quarter of 2008. An event of noncompliance that is not waived by the lenders would be an event of default and would trigger cross-default provisions in other agreements, causing the acceleration of all amounts outstanding to be immediately due and payable. We are seeking a new credit facility that will replace our existing facility before the end of the third quarter of 2008. We anticipate that any new credit facility will provide borrowing capacity in an amount similar to that of the Amended Credit Agreement and will be collateralized by the company's accounts receivable and inventory in the United States and significant international subsidiaries. While a new credit facility may remove the restrictive covenants in the current Amended Credit Agreement, it is likely to bear interest at a higher rate than our current facility. We may also seek additional financing arrangements in future periods as conditions warrant.

On July 21, 2008, the U.K. enacted legislation that likely will result in bringing additional taxable income into our operating structure in that jurisdiction. We currently are unable to quantify the impact on our effective tax rate, but the law change is retroactive to March 12, 2008 and could materially increase our tax expense in future periods. We will work within the law to mitigate the impact of this change.

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

GENERAL

Office Depot, Inc., together with our subsidiaries, is a global supplier of office products and services. We sell to consumers and businesses of all sizes through our three reportable segments (or "Divisions"): North American Retail Division, North American Business Solutions Division, and International Division.

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to provide information to assist in better understanding and evaluating our financial condition and results of operations. We recommend that you read this MD&A in conjunction with our condensed consolidated financial statements and the notes to those statements included in Item 1 of this Quarterly Report on Form 10-Q, as well as our 2007 Annual Report on Form 10-K (the "2007 Form 10-K"), filed with the U.S. Securities and Exchange Commission (the "SEC").

This MD&A contains significant amounts of forward-looking information. Without limitation, when we use the words "believe," "estimate," "plan," "expect," "intend," "anticipate," "continue," "may," "project," "probably," "should," "could," "will" and similar expressions in this Quarterly Report on Form 10-Q, we are identifying forward-looking statements (as such term is defined in the Private Securities Litigation Reform Act of 1995). Our discussion of Risk Factors, found in Item 1A of this Form 10-Q and our 2007 Form 10-K, and Forward-Looking Statements, found immediately following the MD&A in our 2007 Form 10-K, apply to these forward-looking statements.

RESULTS OF OPERATIONS

OVERVIEW

A summary of factors important to understanding the results for the second quarter of 2008 is provided below and further discussed in the narrative that follows this overview.

- Sales for the second quarter and first half of 2008 decreased when compared to the same periods in 2007. For the second quarter, sales in North America were down 6%, while International sales increased 13% in U.S. dollars and 2% in local currencies. North American Retail Division comparable store sales decreased 10% for the second quarter and year to date periods.
- Gross profit as a percentage of sales for the second quarter of 2008 was 27.3%, compared to 30.2% for the same period in 2007. The comparison reflects lower margins from lower vendor program support, increased inventory-related charges, product cost increases and a shift in customer mix in our North American Business Solutions Division, partially offset by higher private brand penetration.
- As part of our previously announced streamlining activities, we recorded \$16 million of charges in the second quarter of 2008 compared to \$12 million of charges in the second quarter of 2007 (the "Charges").
- Total operating expenses as a percent of sales for the second quarter of 2008 were 27.3% compared to 26.1% for the same quarter of the prior year. This increase primarily reflects higher corporate charges for professional and legal fees and compensation costs, the de-leveraging of fixed costs against lower sales levels and the impact of severance charges associated with a voluntary exit incentive plan initiated during the quarter.

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- We reported a net loss of \$2 million for the second quarter of 2008 compared to net earnings of \$106 million in the same quarter of the prior year, and we reported a diluted loss per share of \$(0.01) in the second quarter of 2008 versus earnings per share of \$0.38 in the same period a year ago. After-tax Charges negatively impacted EPS by \$0.05 in the second quarter of 2008 and \$0.03 in the second quarter of 2007.
- Net earnings for the year to date period were \$67 million compared to \$259 million in the same period of the prior year, and diluted earnings per share were \$0.24 in the first half of 2008 versus \$0.93 in the same period a year ago. After-tax Charges negatively impacted EPS by \$0.08 in the first half of 2008 and \$0.08 in the first half of 2007.

Charges and Division Results

Charges

During the third quarter of 2005, we announced a number of material charges relating to asset impairments, exit costs and other operating decisions. This announcement followed a wide-ranging assessment of assets and commitments which began in the second quarter of 2005. We indicated that these actions would continue to impact our results for several years, and expenses associated with future activities would be recognized as the individual plans are implemented and the applicable accounting recognition criteria are met. Charges incurred since this program began in the third quarter of 2005 total \$412 million. We currently estimate recognizing \$20 million of Charges during the remainder of 2008, for a 2008 total of \$47 million. Additionally, we anticipate recognizing \$40 million of Charges in 2009. These future Charges are primarily severance-related expenses and accelerated depreciation associated with the consolidation of warehouses and distribution centers in both North America and Europe and the consolidation and outsourcing of our International call centers. As with any estimate, the timing and amounts may change when projects are implemented and such changes may be material. Also, changes in foreign currency exchange rates may have an impact on amounts reported in U.S. dollars related to foreign operations.

Our measurement of Division operating profit excludes the Charges because they are evaluated internally at the corporate level. The Charges recognized during the second quarter and first half of 2008 and 2007 are included in the following lines in our Condensed Consolidated Statements of Earnings.

<i>(In millions)</i>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Store and warehouse operating and selling expenses	\$ 12	\$ 10	\$ 20	\$ 19
General and administrative expenses	4	2	7	5
Total Charges	<u>\$ 16</u>	<u>\$ 12</u>	<u>\$ 27</u>	<u>\$ 24</u>

Other

The portion of General and Administrative ("G&A") expenses considered directly or closely related to division activity is included in the measurement of Division operating profit. Other companies may charge more or less G&A expenses to their divisions, and our results therefore may not be comparable to similarly titled measures used by some other entities. Our measure of Division operating profit should not be considered as an alternative to operating income or net earnings determined in accordance with accounting principles generally accepted in the United States of America.

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Results for the second quarter and first half of both 2008 and 2007 include recognition of vendor program funds based on amounts earned to date and some amounts based on projections of sales and purchases for the remainder of the respective years. Should sales be less or more than the current projections, the vendor program amounts recognized in those future periods will be adjusted accordingly. For example, in the fourth quarter of 2007, as a result of lower-than-expected sales, we reduced our North American vendor program funds by approximately \$30 million related to amounts recognized in earlier quarterly periods. We have prepared our financial statements in each period based on information available at the time, however, changes in such estimates may impact our financial statements in future periods. For additional information on our accounting for vendor arrangements and related accounting estimates, see Critical Accounting Policies in our 2007 Form 10-K.

North American Retail Division

<u>(Dollars in millions)</u>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Sales	\$1,433.1	\$1,525.3	\$3,146.5	\$3,373.9
% change	-6%	1%	-7%	2%
Division operating profit (loss)	\$ (4.4)	\$ 99.2	\$ 78.1	\$ 251.6
% of sales	-0.3%	6.5%	2.5%	7.5%

Second quarter sales in the North American Retail Division decreased 6% compared to the same period last year. Comparable store sales in the 1,178 stores in the U.S. and Canada that have been open for more than one year decreased 10% in the second quarter and first half of 2008. The decline in comparable store sales was driven primarily by lower sales in our major product categories of furniture, supplies and technology. The sales decline in the second quarter and first half of 2008 continued to reflect the adverse impacts of the macroeconomic environment including rising fuel prices, increases in commodity costs and housing-related issues that resulted in weaker small business and consumer spending as compared to the same periods of 2007. Persistent economic weakness in Florida and California combined with deterioration in markets outside of these two states continued to negatively impact sales levels in the second quarter of 2008. Private brand penetration for the North American Retail Division increased over the second quarter of 2007. While increased private brand penetration improved product margins and contributed to overall profitability in the second quarter, the lower selling prices negatively impacted comparable store sales.

The North American Retail Division reported an operating loss of approximately \$4 million, compared to \$99 million of operating profit in the same period of the prior year. Operating profit as a percentage of sales declined to (0.3)% in the second quarter of 2008, down 680 basis points from 6.5% in the prior year period. Approximately 220 basis points of the decrease in operating margin relates to product margin, including lower vendor program support and higher levels of inventory clearance activities than the second quarter of 2007. Partially offsetting these negative factors were increased private brand penetration and management of promotional activity, which improved product margins in the second quarter of 2008 compared to the same period in 2007. Additionally, following our physical inventory and reconciliation process, we recognized inventory-related charges that lowered our operating margin by approximately 170 basis points compared to the second quarter of 2007. The charges included recognition of inventory shrinkage experienced and the impact of increasing our shrinkage rate to reflect our current estimate of appropriate accrual rates based upon historical amounts and expected sales volumes. The charges also included vendor settlements and import shipping discrepancies. As a result of the decline in 2008 sales, fixed property costs expressed as a percentage of sales reduced operating margin by approximately 160 basis points. While Division operating expenses in absolute dollars were essentially flat compared to the prior year, expressed as a percentage of sales, they reduced operating margin by approximately 130 basis points. This increase was driven primarily by a de-leveraging of payroll and other operating costs against declining sales levels as well as the impact of additional costs related to new stores opened since the second quarter of 2007. Partially offsetting this increase was lower performance-based variable pay and a reduction in workers' compensation and other insurance costs in the second quarter of 2008, which resulted from improved safety experience and its impact on the related projected liabilities.

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On a year to date basis, Division operating profit decreased from \$252 million in 2007 to \$78 million in 2008, and operating margin declined 500 basis points to 2.5% from the first half of 2007. This decrease resulted from similar factors and trends as those outlined in the quarterly discussion above. Additionally, operating expenses for the first half of 2008 were negatively impacted by increased pre-opening expenses related to the higher level of store openings in the first quarter of 2008 compared to the same period of 2007.

Inventory per store was \$909 thousand as of the end of the second quarter of 2008, down approximately 6% from the end of the second quarter of 2007. On an average basis, inventory per store was \$927 thousand for the second quarter of 2008, reflecting a reduction of 9% from the same period in 2007. These changes resulted primarily from inventory management and the mitigation of inventory risk through clearance activities. In response to lower sales levels, we are reducing the amount of inventory we purchase from our vendors. Additionally, we are scaling back on purchasing big-ticket, low-margin products in an effort to reduce our exposure to high-risk items.

Comparable average sales per square foot decreased from \$212 in the second quarter of 2007 to \$192 in the second quarter of 2008. While most of the sales decline was due to a reduction in the number of transactions, average order value was down slightly compared to the second quarter of 2007.

At the end of the second quarter of 2008, Office Depot operated a total of 1,272 office products stores throughout the U.S. and Canada as we opened six stores in the quarter, bringing our total store openings for the first half of 2008 to 51. We have reduced the number of anticipated openings for the balance of the year to less than 15 stores. During the second quarter we remodeled two stores and have completed three in the first half of 2008. For the full year, we have significantly reduced the number of planned store remodels from 100 to 11, in an effort to reduce our capital and expense spending. These remodeling activities affect the performance of the North American Retail Division from both acceleration of depreciation of store assets, as well as from the costs associated with the specific remodel efforts, some of which are not capitalizable. We exclude the brief remodel period from our comparable store sales calculation to partially account for the disruption.

North American Business Solutions Division

<u>(Dollars in millions)</u>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Sales	\$1,064.1	\$1,123.2	\$2,168.1	\$2,285.6
% change	-5%	—%	-5%	1%
Division operating profit	\$ 49.3	\$ 78.3	\$ 108.9	\$ 150.5
% of sales	4.6%	7.0%	5.0%	6.6%

Second quarter and year to date sales in the North American Business Solutions Division decreased 5% compared to the same periods last year, reflecting adverse impacts of the macroeconomic environment, which continued to impact small business and consumer spending. Despite increased sales levels in our large, national account customers and in the public sector, lower sales to small- to mid-sized customers resulted in decreases in Contract sales of 5% for the second quarter and 4% for the year to date period. Sales in our Direct business were down 6% in the second quarter of 2008 and 9% in the first half of 2008 compared to the same periods of the prior year. Almost half of the decrease in Division sales was related to our technology business, which resulted in part from our purposely eliminating unprofitable accounts in this business.

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Operating profit in the North American Business Solutions Division decreased to \$49 million in the second quarter of 2008, compared to \$78 million in the same period of the prior year. Operating profit as a percentage of sales declined to 4.6%, down 240 basis points from the prior year period. Approximately 160 basis points of this decline relates to product margin, including a change in customer mix, increased promotional activity, and some cost increases that could not be fully passed along to our customers. Additionally, we experienced a decrease in vendor program support, which reduced operating margin by approximately 40 basis points. Other negative impacts to operating margin, including increased charges for inventory shrinkage and a de-leveraging of fixed costs against lower sales levels, totaled approximately 70 basis points. Operating expenses as a percentage of sales decreased approximately 30 basis points from the second quarter of 2007, primarily reflecting a reduction in workers' compensation and other insurance costs from improved safety experience and its impact on the related projected liabilities, and to a lesser extent, lower performance-based variable pay. During the second quarter of 2008, the Division reduced its sales force and support staff in response to the slowdown in the economy, resulting in approximately \$1 million of severance charges in the period.

On a year to date basis, Division operating profit decreased from \$151 million in 2007 to \$109 million in 2008, and operating margin declined 160 basis points to 5.0% from the first half of 2007. This decrease resulted from similar factors and trends as those outlined in the quarterly discussion above.

See Part II — Item 1A. "Risk Factors" for additional discussion of risks related to government contracts.

International Division

<u>(Dollars in millions)</u>	<u>Second Quarter</u>		<u>First Half</u>	
	<u>2008</u>	<u>2007</u>	<u>2008</u>	<u>2007</u>
Sales	\$1,107.9	\$ 983.0	\$2,252.5	\$2,065.7
% change	13%	14%	9%	18%
% change in local currency sales	2%	7%	-1%	9%
Division operating profit	\$ 51.2	\$ 42.1	\$ 111.3	\$ 124.2
% of sales	4.6%	4.3%	4.9%	6.0%

Second quarter and year to date sales in the International Division increased 13% and 9%, respectively, in U.S. dollars, and sales in local currencies increased by 2% in the second quarter and decreased by 1% for the first half of 2008. Business softness in the U.K. and a weakening of the macroeconomic environment across continental Europe constrained our sales growth in the second quarter. In local currencies, Contract sales increased by 6% and Direct sales remained relatively flat compared to the second quarter of 2007. The increase in the Contract business was driven primarily by higher sales levels in the U.K. and Germany. Customer service levels continue to improve in the U.K., and despite the economic slowdown in that country, sales in the public sector were up compared to the second quarter of 2007.

Division operating profit increased to \$51 million in the second quarter of 2008, compared to \$42 million in the same period of the prior year. Included in the Division operating profit for the 2008 period is a non-cash gain of approximately \$13 million related to the curtailment of a defined benefit pension plan in the U.K. Changes in foreign exchange rates positively impacted the Division's operating profit by approximately \$3 million. Operating profit as a percentage of sales increased by 30 basis points to 4.6% in the second quarter of 2008, as the 120 basis point improvement related to the pension plan curtailment was somewhat offset by costs associated with investments made to support our growth initiatives. These activities, which reduced operating margin by approximately 100 basis points, are expected to provide operating margin expansion over the longer term and include the establishment of our regional offices in Asia and Latin America, the centralization of certain support functions in Europe, our expansion into Poland and the consolidation of certain warehouse facilities. Lower performance-based variable pay increased operating margin by approximately 30 basis points, but was somewhat offset by 20 basis points of other margin decreases.

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On a year to date basis, Division operating profit decreased from \$124 million in 2007 to \$111 million in 2008. Changes in foreign exchange rates positively impacted the Division's operating profit by approximately \$8 million for the first half of 2008. Operating margin declined 110 basis points to 4.9% from the first half of 2007, reflecting the negative impact of our business in the U.K. in the first quarter of 2008 as well as costs associated with implementing our growth initiatives as outlined in the quarterly discussion above.

During April 2008, the company and Reliance Retail Ltd, a subsidiary of Reliance Industries Ltd., through a joint venture acquired 100% of eOfficePlanet India Pvt., India's leading provider of office products and services to corporate customers. The results of this joint venture have been consolidated into our results for the portion of the quarter since acquisition, but the impact was not significant to the quarter or year to date periods.

Corporate and Other

General and Administrative Expenses: Total G&A increased from \$150 million in the second quarter of 2007 to \$175 million in the second quarter of 2008. As noted above, the portion of G&A expenses considered directly or closely related to division activity is included in the measurement of Division operating profit. The remainder of the total G&A expenses are considered corporate expenses. A breakdown of G&A is provided in the following table:

<i>(In millions)</i>	Second Quarter		First Half	
	2008	2007	2008	2007
Division G&A	\$ 87.7	\$ 86.8	\$ 194.8	\$ 172.8
Corporate G&A	87.5	63.0	179.0	138.5
Total G&A	<u>\$ 175.2</u>	<u>\$ 149.8</u>	<u>\$ 373.8</u>	<u>\$ 311.3</u>

Increases in Division G&A, which were primarily driven by investments made to support our International growth initiatives as discussed above and the impact of changes in foreign exchange rates, were offset by reduced performance-based variable pay. Corporate G&A includes Charges of \$4 million and \$2 million in the second quarter of 2008 and 2007, respectively. After considering the impact of Charges recognized in the period, corporate G&A expenses as a percentage of sales increased approximately 60 basis points during the second quarter of 2008 compared to the same period of 2007 primarily reflecting higher corporate charges for professional and legal fees associated with the company's recent proxy challenge and legal matters described in Part II — Item 1. "Legal Proceedings." We experienced higher compensation costs in corporate G&A in the second quarter of 2008 compared to the second quarter of 2007, including a slight increase in performance-based variable pay. Also, during the second quarter of 2008 the company initiated a voluntary exit incentive program for certain employees that resulted in a charge of approximately \$5.6 million for severance expenses in the period. An additional \$1.3 million of severance will be recognized over the balance of 2008 as certain employees complete their service and the accounting recognition criteria are met.

During 2006, we sold our current corporate campus and leased the facility back as construction of a new facility is being completed. Amortization of the deferred gain on the sale largely offsets the rent during the leaseback period.

Other income (expense): Interest income totaled approximately \$6 million the second quarter of 2008 compared to \$1 million in the second quarter of 2007, reflecting \$5 million of incremental interest income related to prior periods, none of which were individually significant. Interest expense declined from approximately \$18 million in the second quarter of 2007 to \$14 million in response to lower interest rates and lower average debt balances in the 2008 period.

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The decrease in net miscellaneous income in the second quarter resulted primarily from foreign currency losses recognized in the period. The majority of miscellaneous income is attributable to equity in earnings from our joint venture in Mexico, Office Depot de Mexico, which increased from \$7.3 million in the second quarter of 2007 to \$8.5 million in the second quarter of 2008. The decrease in net miscellaneous income for the first half of 2008 also resulted primarily from foreign currency losses. These losses were partially offset by a gain of approximately \$5 million related to the sale of certain non-operating assets, which was recognized during the first quarter of 2008.

Other — Income Taxes: Our effective tax rate was 47.7% and 25.5% for the second quarters of 2008 and 2007, respectively. The current effective rate of 47.7% primarily reflects the impact from adjusting for an anticipated full year shift in the mix of domestic and international pre-tax income divided by a low current period pre-tax amount. The lower rate for the second quarter of 2007 mainly reflected the impact from an adjustment to a valuation allowance that was recognized in that period.

On July 21, 2008, the U.K. enacted legislation that likely will result in bringing additional taxable income into our operating structure in that jurisdiction. We currently are unable to quantify the impact on our effective tax rate, but the law change is retroactive to March 12, 2008 and could materially increase our tax expense in future periods. We will work within the law to mitigate the impact of this change. Without consideration of this tax law change, we anticipate our full year base operating rate to be approximately 29% to 30%. However, the effective tax rate in future periods can be affected by variability in our mix of income, the tax rates in various jurisdictions, changes in the rules related to accounting for income taxes, outcomes from tax audits that regularly are in process and our assessment of the need for accruals for uncertain tax positions.

LIQUIDITY AND CAPITAL RESOURCES

At June 28, 2008, we had approximately \$157 million of cash and cash equivalents, as well as \$612 million of available credit under our revolving credit facility. The credit availability reflects outstanding borrowings, as well as coverage of \$92 million of outstanding letters of credit. We had an additional \$86 million of letters of credit outstanding under separate agreements.

Our primary needs for cash include working capital for operations, capital expenditures for new stores, store remodels, information technology projects and supply chain costs, and funds to service our debt obligations and make acquisitions. We currently anticipate that we will fund these activities through cash on hand, funds generated from operations, property and equipment leases and funds available under our credit facilities.

During the first quarter of 2008, we amended our Revolving Credit Facility (the "Amended Credit Agreement") which revised our required minimum fixed charge coverage ratio, limited our ability to make investments and acquisitions, restricted our ability to repurchase shares of company common stock and limited the amount of borrowings or liens the company can incur. Based on current projected operating results, the company anticipates remaining in compliance with all of the restrictive covenants, though the margin of coverage for the fixed charge coverage ratio, which is a trailing four quarter calculation, is projected to be at its lowest point at the end of the third quarter of 2008. If actual operating results for the third quarter are lower than expected, we may be in noncompliance with the Amended Credit Agreement as of the end of the third quarter of 2008. An event of noncompliance that is not waived by the lenders would be an event of default and would trigger cross-default provisions in other agreements, causing the acceleration of all amounts outstanding to be immediately due and payable. We are seeking a new credit facility that will replace our existing facility before the end of the third quarter of 2008. We anticipate that any new credit facility will provide borrowing capacity in an amount similar to that of the Amended Credit Agreement and will be collateralized by the company's accounts receivable and inventory in the United States and significant international subsidiaries. While a new credit facility may remove the restrictive covenants in the current Amended Credit Agreement, it is likely to bear interest at a higher rate than our current facility. We may also seek additional financing arrangements in future periods as conditions warrant.

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We hold cash throughout our service areas, but we principally manage our cash through regional headquarters in North America and Europe. Historically, we moved cash between those regions from time to time through short-term transactions and used these cash transfers at the end of fiscal quarterly periods to pay down borrowings outstanding under our credit facilities. Although such transfers and debt repayments took place at the end of the second quarter of 2007, we completed a non-taxable distribution to the U.S. in the amount of \$220 million during the fourth quarter of 2007, thereby permanently repatriating this cash. Additional distributions, including distributions of foreign earnings or changes in long-term arrangements could result in significant additional U.S. tax payments and income tax expense. Currently, there are no plans to change our expectation of foreign earnings reinvestment or the long-term nature of our intercompany arrangements.

Cash provided by operating activities decreased from \$293 million in the first half of 2007 to \$138 million in the first half of 2008, reflecting a reduction in business performance. Depreciation and amortization decreased by \$9 million year over year as we recognized less accelerated depreciation in Charges in the first quarter of 2008. Changes in net working capital and other components resulted in a \$124 million use of cash in the first half of 2008, compared to a \$153 million use in the first half of 2007. The use in the 2008 period primarily reflected the timing of cash payments, offset partially by reduced inventory and receivable levels during the period. The timing of payments is subject to variability quarter to quarter depending on a variety of factors, including the flow of goods, credit terms, timing of promotions, vendor production planning, new product introductions and working capital management. Vendor payments processed but not released until late in the quarter totaled approximately \$205 million at the end of the second quarter of 2007, but we made no such disbursement delays at the end of the second quarter of 2008. The effect of such vendor disbursement delays at period-end on our 2007 financial statements was the reporting of higher accounts payable balance and lower balance of outstanding borrowings under our revolving credit facility than would otherwise appear if the vendor payments had been released earlier. For our accounting policy on cash management, see Note A of the Notes to Condensed Consolidated Financial Statements.

Cash used in investing activities was \$276 million in the first half of 2008, compared to \$190 million in the same period last year. The use of cash for the 2008 period reflects \$207 million of capital expenditures for our new store openings and store remodels in North America, as well as distribution network infrastructure costs, investments in information technology and costs associated with our new corporate headquarters facility. Additionally, during the second quarter of 2008, we acquired a controlling interest in a joint venture in India and acquired all remaining minority interest shares of our joint ventures in Israel and China. These acquisitions resulted in a use of cash of approximately \$78 million. We also made previously accrued acquisition-related payments to former owners of an entity acquired in 2006. During the first half of 2008, we purchased certain non-operating assets for approximately \$40 million. We sold certain of these non-operating assets in the first quarter of 2008, realizing a gain of approximately \$5 million in that period and anticipate selling an additional asset during the second half of 2008 at current carrying value. Also, \$18 million of cash that had been held in a restricted account at the end of 2007 was released during the first quarter of 2008. Investing activities in 2007 included capital expenditures from our store expansion and remodel efforts in North America as well as investments in information technology. Also, during the first half of 2007, we made acquisition-related payments to former owners of entities acquired in 2006 and received proceeds from the disposition of assets, including proceeds from a sale-leaseback transaction related to a European warehouse facility. We anticipate capital spending for the full year 2008 to be approximately \$375 million.

Cash provided by financing activities in the first half of 2008 was \$69 million, primarily reflecting increased borrowings on our revolving credit facility during the second quarter of the year. In the first half of 2007, cash used in financing activities totaled \$156 million, which resulted primarily from repurchases of our common stock as we purchased 5.7 million shares for approximately \$200 million in the first half of 2007.

CRITICAL ACCOUNTING POLICIES

Our condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. Preparation of these statements requires management to make judgments and estimates. Some accounting policies have a significant impact on amounts reported in these financial statements. A summary of significant accounting policies and a description of accounting policies that are considered critical may be found in our 2007 Form 10-K, filed on February 26, 2008, in the Notes to the Consolidated Financial Statements, Note A, and the Critical Accounting Policies section.

New Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* ("FAS 157"). This Standard defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. FAS 157 is effective for fiscal years beginning after November 15, 2007 for financial assets and liabilities, as well as for any other assets and liabilities that are carried at fair value on a recurring basis in financial statements. Certain aspects of this Standard were effective at the beginning of the first quarter of 2008 and had no impact on the company. In November 2007, the FASB provided a one year deferral for the implementation of FAS 157 for other nonfinancial assets and liabilities. We do not anticipate that the adoption of the deferred portion of FAS 157 will have a material impact on our financial condition, results of operations or cash flows.

The FASB also issued in September 2006 Statement of Financial Accounting Standards No. 158, *Employers' Accounting for Defined Benefit Pension and Other Postretirement Plans — an amendment of FASB Statement No. 87, 88, 106 and 132(R)* ("FAS 158"). This Standard prescribes two phases of implementation. In the first phase, which we adopted in 2006, deferred pension gains and losses are reflected in accumulated other comprehensive income. The second phase of FAS 158 requires that the valuation date of plan accounts be as of the end of the fiscal year, with that change required to be implemented by fiscal years ending after December 15, 2008. We anticipate that the change will reduce year end 2008 retained earnings by approximately \$0.8 million at current exchange rates.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 141 (R), *Business Combinations* ("FAS 141R"). This Standard retains the fundamental acquisition method of accounting established in Statement 141; however, among other things, FAS 141R requires recognition of assets and liabilities of noncontrolling interests acquired, fair value measurement of consideration and contingent consideration, expense recognition for transaction costs and certain integration costs, recognition of the fair value of contingencies, and adjustments to income tax expense for changes in an acquirer's existing valuation allowances or uncertain tax positions that result from the business combination. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. The Standard does not address transition provisions for certain items treated differently under FAS 141 and FAS 141R. Accordingly, capitalized acquisition costs related to transactions not finalized at the time of adoption of FAS 141R will be expensed under that Standard. We are not able to currently estimate the amounts to be expensed upon adoption.

In December 2007, the FASB issued Statement of Financial Accounting Standards No. 160, *Noncontrolling Interests in Consolidated Financial Statements*. This Standard changes the way consolidated net income is presented, requiring consolidated net income to report amounts attributable to both the parent and the noncontrolling interest but earnings per share will be based on amounts attributable to the parent. It also establishes protocol for recognizing certain ownership changes as equity transactions or gain or loss and requires presentation of noncontrolling ownership interest as a component of consolidated equity. The Standard is effective for annual reporting periods beginning after December 15, 2008 and shall be applied prospectively. We have not yet completed our assessment of the impact FAS 160 will have on our financial condition, results of operations or cash flows.

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In March 2008, the FASB issued Statement of Financial Accounting Standards No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an amendment of FASB Statement No. 133* (“FAS 161”). This Standard requires enhanced disclosures regarding derivatives and hedging activities, including: (a) the manner in which an entity uses derivative instruments; (b) the manner in which derivative instruments and related hedged items are accounted for under Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*; and (c) the effect of derivative instruments and related hedged items on an entity’s financial position, financial performance, and cash flows. The Standard is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. As FAS 161 relates specifically to disclosures, the Standard will have no impact on our financial condition, results of operations or cash flows.

In May 2008, the FASB issued Statement of Financial Accounting Standards No. 162, *The Hierarchy of Generally Accepted Accounting Principles* (“FAS 162”). This Standard identifies the sources of accounting principles and the framework for selecting the principles to be used in the preparation of financial statements of nongovernmental entities that are presented in conformity with generally accepted accounting principles. FAS 162 directs the hierarchy to the entity, rather than the independent auditors, as the entity is responsible for selecting accounting principles for financial statements that are presented in conformity with generally accepted accounting principles. The Standard is effective 60 days following SEC approval of the Public Company Accounting Oversight Board amendments to remove the hierarchy of generally accepted accounting principles from the auditing standards. FAS 162 is not expected to have an impact on our financial condition, results of operations or cash flows.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risks

At June 28, 2008, there had not been a material change in the interest rate risk information disclosed in the “Market Sensitive Risks and Positions” subsection of the Management’s Discussion and Analysis of Financial Condition and Results of Operations set forth in Item 7 of our 2007 Form 10-K.

Foreign Exchange Rate Risks

At June 28, 2008, there had not been a material change in any of the foreign exchange risk information disclosed in the “Market Sensitive Risks and Positions” subsection of the Management’s Discussion and Analysis of Financial Condition and Results of Operations set forth in Item 7 of our 2007 Form 10-K.

Item 4. Controls and Procedures

We maintain controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934, as amended (the “Exchange Act”) is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be in this report is accumulated and communicated to its management, including its principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Our management recognizes that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving their objectives and management necessarily applies its judgment in evaluating the possible controls and procedures.

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Our management has evaluated, with the participation of its principal executive officer and principal financial officer, the effectiveness of its disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based upon that evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, the company's disclosure controls and procedures were effective.

Changes in Internal Control over Financial Reporting.

The company is continuously seeking to improve the efficiency and effectiveness of its operations and of its internal controls. This results in refinements to processes throughout the company. However, there has been no change in the company's internal control over financial reporting that occurred during the company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

We are involved in litigation arising in the normal course of our business. While, from time to time, claims are asserted that make demands for a large sum of money (including, from time to time, actions which are asserted to be maintainable as class action suits), we do not believe that any of these matters, either individually or in the aggregate, will materially affect our financial position or the results of our operations.

As previously disclosed, the Company continues to cooperate with the SEC in their formal order of investigation issued in January 2008 covering the matters previously subject to the informal review that commenced July 2007. A formal order of investigation allows the SEC to subpoena witnesses, books, records, and other relevant documents. The matters subject to the investigation include contacts and communications with financial analysts, inventory receipt and reserves, timing of vendor payments, certain intercompany loans, certain payments to foreign officials, inventory obsolescence and timing and recognition of vendor program funds.

In early November 2007, two putative class action lawsuits were filed against the Company and certain of its executive officers alleging violations of the Securities Exchange Act of 1934. In addition, two putative shareholder derivative actions were filed against the Company and its directors alleging various state law claims including breach of fiduciary duty. The allegations in all four lawsuits primarily relate to the accounting for vendor program funds. Each of the above-referenced lawsuits were filed in the Southern District of Florida, and are captioned as follows: (1) Nichols v. Office Depot, Inc., Steve Odland and Patricia McKay filed on November 6, 2007; (2) Sheet Metal Worker Local 28 Pension Fund v. Office Depot, Inc., Steve Odland and Patricia McKay filed on November 5, 2007; (3) Marin, derivatively, on behalf of Office Depot, Inc. v. Office Depot, Inc., Steve Odland, Neil R. Austrian, David W. Bernauer, Abelardo E. Bru, Marsha J. Evans, David I. Fuente, Brenda J. Gaines, Myra M. Hart, Kathleen Mason, Michael J. Myers, and Office Depot, Inc. filed on November 8, 2007; and (4) Mason, derivatively, on behalf of Office Depot, Inc. v. Steve Odland, Neil R. Austrian, David W. Bernauer, Abelardo E. Bru, Marsha J. Evans, David I. Fuente, Brenda J. Gaines, Myra M. Hart, Kathleen Mason, Michael J. Myers, and Office Depot, Inc. filed on November 8, 2007.

On March 21, 2008, the court in the Southern District of Florida entered an Order consolidating the class action lawsuits and an Order consolidating the derivative actions. Lead plaintiff in the consolidated class actions, the New Mexico Educational Retirement Board, filed its Consolidated Amended Complaint on July 2, 2008. The response is due on or before September 2, 2008. These lawsuits are in their early stages and we do not currently believe that they will have a material adverse impact on the Company or its results of operations. We intend to vigorously defend against these claims.

Item 1A. Risk Factors.

With the exception of material changes to the following previously disclosed risk factors, there have been no other material changes in our risk factors from those disclosed in Part 1, Item 1A of our 2007 Form 10-K.

Government Contracts: One of our largest clients currently consists of a cooperative representing various state and local governments for whom we provide office supplies and services either through a cooperative contract arrangement or through individual contracts. Our sales under these arrangements to multiple customers were less than 5% of our consolidated sales during the six months ended June 28, 2008. These relationships are subject to uncertain future funding levels and federal and state procurement laws and require restrictive contract terms; any of these factors could curtail current or future business. Contracting with state and local governments is highly competitive and can be expensive and time-consuming, often requiring that we incur significant upfront time and

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expense without any assurance that we will win a contract. Our ability to compete successfully for and retain business with these various state and local governments is highly dependent on cost-effective performance. Our government business is also sensitive to changes in national and international priorities and U.S., state and local government budgets. Currently, we provide office supplies and services to 21 states and numerous local agencies in the United States. Many of these government contracts have provisions that permit the state or local government agency to terminate the contract for convenience with appropriate notice. In addition, in the ordinary course of business, these government contracts may be subject to audits. There has been recent negative press regarding some of our government contracts. State and local governments may elect not to renew their contracts and submit them for rebid and may seek to exclude the company from participating in bids. We have conducted or are in the process of conducting our own review of numerous government contracts in an effort to verify contract compliance and pricing accuracy and are participating or seeking to participate in bidding for applicable contracts. Nevertheless, additional negative press or allegations of performance issues, even if unfounded, could lead state or local governments to terminate or not renew their contracts with us or refuse to allow us to participate in bids all of which could have a negative impact on our business.

Regulatory Risks: We are subject to a formal order of investigation from the SEC, in connection with our contacts and communications with financial analysts, inventory receipt and reserves, timing of vendor payments, certain intercompany loans, certain payments to foreign officials, inventory obsolescence and timing and recognition of vendor program funds. We are cooperating with the SEC on all matters. A negative outcome from this investigation could require us to restate prior financial results and could result in fines, penalties, or other remedies being imposed on us, which under certain circumstances could have a material adverse effect on our business.

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

The following table provides information with respect to company purchases made of Office Depot, Inc. common stock during the second quarter of the 2008 fiscal year:

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs ⁽¹⁾	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs
March 30, 2008 — April 26, 2008	5,799 ⁽²⁾	\$11.01	—	\$500,000,000
April 27, 2008 — May 24, 2008	—	\$ —	—	\$500,000,000
May 25, 2008 — June 28, 2008	—	\$ —	—	\$500,000,000
Total	5,799	\$11.01	—	\$500,000,000

- (1) On April 25, 2007, the board of directors authorized a common stock repurchase program whereby we were authorized to repurchase \$500 million of our common stock. As of June 28, 2008, there had been no repurchases made under this authorization. As disclosed above, the amendment to the Company's Revolving Credit Facility imposes restrictions on the Company's ability to repurchase or redeem shares of its stock, subject to certain baskets set forth in the Amendment.
- (2) Represents shares of common stock delivered or restricted shares of common stock withheld to pay income tax or other tax liabilities with respect to the vesting of restricted stock, exercise of stock options, or the settlement of performance share awards.

Item 4. Submission of Matters to a Vote of Security Holders

The company's annual meeting of stockholders was held on April 23, 2008. Of the total number of common shares outstanding on March 3, 2008, a total of 188,785,601 were represented in person or by proxy. Results of votes with respect to proposals submitted at that meeting are as follows:

- a. To elect 12 nominees to serve as directors to hold office until the next annual meeting of our stockholders or until their successors have been elected and qualified. Our stockholders voted to elect all 12 nominees to serve as directors. Votes recorded, by nominee, were as follows:

Nominee	For	Against/ Withheld
Lee A. Ault, III	108,011,359	80,660,597
Neil R. Austrian	155,040,753	33,693,403
David W. Bernauer	120,069,277	68,584,670
Abelardo E. Bru	123,067,125	65,589,021
Marsha Evans	120,318,269	68,346,068
David I. Fuente	166,465,307	15,708,847
Brenda J. Gaines	184,073,951	4,652,931
Myra M. Hart	183,584,653	5,131,659
W. Scott Hedrick	120,523,888	68,130,853
Kathleen Mason	184,415,780	4,314,094
Michael J. Myers	184,195,530	4,532,938
Steve Odland	166,653,921	15,514,437

- b. To approve our 2008 Bonus Plan for Executive Management Employees. Our stockholders voted to approve this proposal with 151,873,877 votes for and 27,545,826 votes against. There were 9,365,897 abstentions and 84,223,613 broker non-votes.
- c. To ratify our Board's appointment of Deloitte & Touche LLP as our independent public accountants for the 2008 fiscal year. Our stockholders voted to approve this proposal with 173,367,921 votes for and 7,134,266 votes against. There were 8,283,414 abstentions and 84,223,613 broker non-votes.

Item 5. Other Information.

On July 25, 2008, our Board of Directors amended and restated the company's Amended and Restated By-Laws (the "By-Laws"). The significant revisions effected by the amendment and restatement of the By-Laws are as follows: (i) revisions regarding the determination that an election is a "contested election" and outlining the Board's right to challenge the validity of a stockholder's notice of nomination of director or to challenge the nominees for director on other grounds; (ii) revisions providing that a stockholder's notice must be delivered to the company 90-120 days before the anniversary of the preceding year's annual meeting instead of 120 days before the date the initial proxy statement was mailed to stockholders in connection with the preceding years annual meeting; (iii) revisions that ensure that the Board has adequate information to make a recommendation to stockholders regarding any nomination or proposal received from a stockholder and describes the information that must be included in all stockholders' proposals; (iv) revisions that outline the appointment of a Lead Director and that describe the responsibilities and duties of the Lead Director; (v) revisions regarding the company's indemnification of officers, directors and other employees and agents and when such parties may be indemnified and the timing of such indemnification payments; and (vi) non-substantive revisions to numerous By-Law provisions to provide needed clarifications of general provisions and to conform the language to the language of the Delaware General Corporation Law.

The By-Laws, as amended and restated, took effect upon adoption by the Board of Directors on July 25, 2008.

This description of the amendment and restatement of the By-Laws is qualified in its entirety by reference to the By-Laws, amended and restated as of July 25, 2008, a copy of which is filed as Exhibit 3.2 to this Form 10-Q and incorporated herein by reference.

Item 6. Exhibits

Exhibits

- 3.2 Bylaws, as amended
- 31.1 Rule 13a-14(a)/15d-14(a) Certification of CEO
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of CFO
- 32 Section 1350 Certification

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.

OFFICE DEPOT, INC.
(Registrant)

Date: July 30, 2008

By: /s/ Steve Odland
Steve Odland
Chief Executive Officer and Chairman, Board of
Directors (Principal Executive Officer)

Date: July 30, 2008

By: /s/ Charles E. Brown
Charles E. Brown
President, International and Acting Chief Financial
Officer
(Principal Financial Officer)

Date: July 30, 2008

By: /s/ Jennifer Moline
Jennifer Moline
Senior Vice President and Controller (Principal
Accounting Officer)

**AMENDED AND RESTATED BYLAWS
OF
OFFICE DEPOT, INC.
A DELAWARE CORPORATION**

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation shall be located at the corporation's principal place of business in the State of Delaware or at the office of the person or entity then acting as the corporation's registered agent in Delaware. The registered office and/or registered agent of the corporation may be changed from time to time by resolution of the Board of Directors.

Section 2. Other Offices. The corporation may also have offices at such other places as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

STOCKHOLDERS

Section 1. Annual Meeting. The annual meeting of stockholders for the election of directors and the conduct of such other business as may properly come before the meeting in accordance with these Bylaws shall be held at such place and time on such day, other than a legal holiday, as the Chief Executive Officer of the corporation in each such year determines; provided, that if the Chief Executive Officer does not act, the Board of Directors shall determine the place, time and date of such meeting.

Section 2. Special Meetings. Special meetings of stockholders may be called for any purpose and may be held at such time and place as shall be stated in a notice of meeting or in a duly executed waiver of notice thereof. Such meetings may be called at any time by the Chief Executive Officer or, if directed by resolution of the Board of Directors, the Secretary. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting.

Section 3. Place of Meetings. Annual and special meetings may be held at such place as the Board of Directors may determine. If no designation is made, the place of meeting shall be the principal executive office of the corporation.

Section 4. Notice. Whenever stockholders are required or permitted to take action at a meeting, written or printed notice stating the place, date, time, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to

vote at such meeting not less than 10 nor more than 60 days before the date of the meeting. All such notices shall be delivered, either (a) personally or by mail, by or at the direction of the Chief Executive Officer or the Secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation or (b) by a form of electronic transmission, including electronic mail, in the manner provided in and to the extent permitted by the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). Nothing in the Bylaws shall preclude the stockholders from waiving notice as provided in Article IV hereof. Any previously scheduled annual meeting of the stockholders may be postponed, and any previously scheduled special meeting of the stockholders may be postponed or cancelled, by resolution of the Board of Directors upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 5. Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 nor less than 10 days before the date of any such meeting. Only stockholders as of the record date are entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment or postponement of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned or postponement meeting.

Section 6. Quorum. The holders of a majority of the issued and outstanding shares of common stock of the corporation entitled to vote, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders. If a quorum is not present, the Chairman of the meeting or the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote at the meeting may adjourn the meeting to another time and/or place from time to time. When a quorum is once present to commence a meeting of stockholders, it shall not be broken by the subsequent withdrawal of the stockholders or their proxies.

Section 7. Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At any such adjourned meeting at which a quorum shall be present or represented, the corporation may transact any business which might have been transacted at the original meeting. Notwithstanding the foregoing, if the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given as provided in Section 4 of Article II hereof, but such notice may be waived as provided in Article IV hereof.

Section 8. Voting by Stockholders on Matters Other Than the Election of Directors. With respect to any matters as to which no other voting requirement is specified by the Delaware General Corporation Law, the certificate of incorporation of the corporation (the "Certificate of Incorporation") or these Bylaws, the affirmative vote required for stockholder action shall be that of a majority of the shares present in person or represented by proxy (as counted for purposes

of determining the existence of a quorum) and entitled to vote at a meeting of stockholders at which a quorum is present. In the case of a matter submitted for a vote of the stockholders as to which a stockholder approval requirement is applicable under the stockholder approval policy of the New York Stock Exchange, the requirements of Rule 16b-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), or any provision of the Internal Revenue Code of 1986, as amended (the "Code"), including Code Section 162(m), in each case for which no higher voting requirement is specified by the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws, the vote required for approval shall be the requisite vote specified in such stockholder approval policy, Rule 16b-3 or such Code provision, as the case may be (or the highest such requirement if more than one is applicable). For the approval of the appointment of independent public accountants (if submitted for a vote of the stockholders), the vote required for approval shall be a majority of the votes cast on the matter.

Section 9. Voting by Stockholders in the Election of Directors. Each director to be elected by the stockholders shall be elected by a majority of the votes cast at any meeting held for the purpose of the election of directors at which a quorum is present, subject to the following provisions:

(a) Resignation of Incumbent Director Who Fails to Receive a Majority Vote: In any non-contested election of directors, any director nominee who is an incumbent director who receives a greater number of votes "withheld" from his or her election (or "against" or "no" votes) than votes "for" such election shall immediately tender his or her resignation to the Board of Directors, which resignation shall be irrevocable. Thereafter, the Board of Directors shall decide, through a process managed by the Corporate Governance and Nominating Committee (and excluding the nominee in question from all Board of Directors and Committee deliberations), whether to accept such resignation within 90 days of the date of such resignation. Absent a compelling reason for the director to remain on the Board of Directors (as determined by the Board of Directors), the Board of Directors shall accept the resignation from the director. To the extent that the Board of Directors determines that there is a compelling reason for the director to remain on the Board of Directors and does not accept the resignation, the Board of Directors' explanation of its decision shall be disclosed promptly in a Current Report on Form 8-K filed with the United States Securities and Exchange Commission or in a press release that is widely disseminated.

(b) Definition of "Compelling Reason": For purposes of this policy, a "compelling reason" shall be determined by the Board of Directors (excluding the nominee in question from all Board of Directors and Committee deliberations) and could include, by way of example and without limitation, situations in which a director nominee was the target of a "vote no" or "withhold" campaign on what the Board of Directors believes to be an illegitimate or inappropriate basis or if the resignation would cause the corporation to be in violation of its constituent documents or regulatory requirements.

(c) Consequences of the Board of Directors' Acceptance or Non-Acceptance of a Director's Resignation: If such incumbent director's resignation is accepted by the Board of Directors, then such director shall immediately cease to be a member of the Board of Directors upon the date of action taken by the Board of Directors to accept such resignation. If such incumbent director's resignation is not accepted by the Board of Directors, such director will continue to serve until the next annual meeting, or until his or her subsequent resignation or removal.

(d) Failure of a Non-Incumbent Director to Win Election: If any nominee for director who is not an incumbent fails in a non-contested election to receive a majority vote for his or her election at any meeting for the purpose of the election of directors at which a quorum is present, such candidate shall not be elected and shall not take office.

(e) Filling Vacancies: If an incumbent director's resignation is accepted by the Board of Directors pursuant to this Bylaw, or if a non-incumbent nominee for director is not elected, the Board of Directors, may fill any resulting vacancy pursuant to the provisions of Article III, Section 4 of these Bylaws, or may decrease the size of the Board of Directors pursuant to the provisions of Article III, Section 2 of these Bylaws.

(f) Nominees to Agree in Writing to Abide by this Bylaw: To be eligible for election as a director of the corporation, each nominee (including incumbent directors and nominees proposed by stockholders in accordance with Article II, Section 14 of these Bylaws) must agree in writing in advance to comply with the requirements of this Section 9 of Article II of these Bylaws.

(g) Majority Vote Defined: For purposes of this Bylaw, a majority of votes cast shall mean that the number of shares voted "for" a director's election exceeds 50% of the total number of votes cast with respect to that director's election. Votes "cast" shall include votes to withhold authority and votes "against" and "no" votes but shall exclude abstentions with respect to a director's election or with respect to the election of directors in general.

(h) Vote Standard in Contested Elections: Notwithstanding anything to the contrary contained in this Article II, Section 9 of the Bylaws, in the event of a contested election, directors shall be elected by the vote of a plurality of the votes cast at any meeting for the election of directors at which a quorum is present. For purposes of this Bylaw, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination thereof being made by the Secretary (i) as of the close of the applicable notice of nomination period set forth in Article II, Section 14 of the Bylaws based on whether one or more notice(s) of nomination were timely filed in accordance with said Bylaws or (ii) if later, reasonably promptly following the determination by any court or other tribunal of competent jurisdiction that one or more notice(s) of nomination were timely filed in accordance with said Bylaws; provided that the determination that an election is a contested election by the Secretary pursuant to clause (i) or (ii) shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity. If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn (or declared invalid or untimely by any court or other tribunal of competent jurisdiction) such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election, but in all other cases, once an election is determined to be a contested election, directors shall be elected by the vote of a plurality of the votes cast.

Section 10. Voting Rights. Except as otherwise provided by the Delaware General Corporation Law or by the Certificate of Incorporation and subject to Article VII, Section 3 of the Bylaws, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 11. Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy specifically provides for a longer period. Each proxy shall be in writing executed by the stockholder giving the proxy or by his duly authorized attorney. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it, or his legal representatives or assigns except in those cases where an irrevocable proxy permitted by statute has been given. Any proxy is suspended when the person executing the proxy is present at a meeting of stockholders and elects to vote, except that when such proxy is coupled with an interest sufficient in law to support an irrevocable power and the fact of the interest appears on the face of the proxy, the agent named in the proxy shall have all voting and other rights referred to in the proxy, notwithstanding the presence of the person executing the proxy. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the Secretary or a person designated by the Secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 12. Action by Written Consent.

(a) General. Any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the State of Delaware, or the corporation's principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested, provided, however, that no consent or consents delivered by certified or registered mail shall be deemed delivered until received at the registered office. All consents properly delivered in accordance with this Section shall be deemed to be recorded when so delivered. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting of stockholders.

(b) Inspectors of Written Consent. In the event of the delivery, in the manner provided by Section 12(a) of this Bylaw, to the corporation of the requisite written consent or consents to take corporate action and/or any related revocation or revocations, the corporation shall engage nationally recognized independent inspectors of elections for the purpose of promptly performing a ministerial review of the validity of the consents and revocations. For the purpose of permitting the inspectors to perform such review, no action by written consent without a meeting shall be effective until such date as the independent inspectors certify to the corporation that the consents delivered to the corporation in accordance with Section 12(a) of this Bylaw represent at least the minimum number of votes that would be necessary to take the corporate action. Nothing contained in this paragraph shall in any way be construed to suggest or imply that the Board of Directors or any stockholder shall not be entitled to contest the validity of any consent or revocation thereof, whether before or after such certification by the independent inspectors,

or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(c) Effectiveness of Action by Written Consent. No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation as required by this section, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded.

(d) Notice of Action by Written Consent. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take the action were recorded.

(e) Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Only stockholders as of the record date are entitled to consent to corporate action in writing without a meeting. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within 10 days after the date on which such a request is received, adopt a resolution fixing the record date (unless a record date has previously been fixed by the Board of Directors pursuant to the first sentence of this Bylaw). If no record date has been fixed by the Board of Directors, pursuant to this Bylaw or otherwise within 10 days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 13. Stock Records. The Secretary or agent having charge of the stock transfer books shall make, at least 10 days before each meeting or any adjournment thereof, arranged in alphabetical order and showing the address of and the number and class and series, if any, of shares held by each. For a period of 10 days prior to such meeting, such list shall be kept at the principal place of business of the corporation or at the office of the transfer agent or registrar of the corporation and such other places, if any, as required by statute and shall be subject to inspection by any stockholder at any time during usual business hours. Such list shall also be

produced and kept open at the time and place of the meeting and shall be subject to the inspection of any stockholder at any time during the meeting.

Section 14. Notice of Stockholder Nominations and Other Business.

(a) Annual Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors and the proposal of other business to be considered by the corporation's stockholders may be made at an annual meeting of stockholders (A) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (B) by any stockholder of the corporation who (i) was a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the annual meeting (including any adjournment or postponement thereof), (ii) is entitled to vote at the meeting and (iii) complies with the notice procedures set forth in this Bylaw as to such business or nomination; this clause (B) shall be the exclusive means for a stockholder to make nominations or submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the corporation's notice of meeting) before an annual meeting of stockholders.

(2) Without qualification, for any nominations or any other business to be properly brought before an annual meeting by a stockholder pursuant to Section 14(a)(1)(B) of this Bylaw, the stockholder must have given timely notice in writing to the Secretary and such other business must otherwise be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day and not later than the close of business on the 90th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to the date of such annual meeting and not later than the close of business on the later of the 90th day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than 100 days prior to the date of such annual meeting, the tenth day following the day on which public announcement of the date of such meeting is first made by the corporation. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

To be in proper form, a stockholder's notice (whether given pursuant to this Section 14(a)(2) or Section (14)(b)) to the Secretary must:

(A) set forth, as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, if any, (ii) (1) the class or series and number of shares of the corporation which are, directly or indirectly, owned beneficially and of record by such stockholder and such beneficial owner, (2) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation,

whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the corporation or otherwise (a "Derivative Instrument") directly or indirectly owned beneficially by such stockholder and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation, (3) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder has a right to vote any shares of any security of the corporation, (4) any short interest in any security of the corporation (for purposes of this Bylaw a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security), (5) any rights to dividends on the shares of the corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the corporation, (6) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (7) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date), and (iii) any other information relating to such stockholder and beneficial owner, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder;

(B) if the notice relates to any business other than a nomination of a director or directors that the stockholder proposes to bring before the annual meeting, set forth (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, in such business and (ii) a description of all agreements, arrangements and understandings between such stockholder and beneficial owner, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder;

(C) set forth, as to each person, if any, whom the stockholder proposes to nominate for election or reelection to the Board of Directors (i) all information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected) and (ii) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without

limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and

(D) with respect to each nominee for election or reelection to the Board of Directors, include a completed and signed questionnaire, representation and agreement required by Article II, Section 15 of this Bylaws. The corporation may require any proposed nominee to furnish such other information as may reasonably be required by the corporation to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee.

(3) Notwithstanding anything in the second sentence of Section 14(a)(2) of this Bylaw to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased and there is no public announcement by the corporation naming all of the nominees for director or specifying the size of the increased Board of Directors at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Bylaw shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (1) by or at the direction of the Board of Directors, including pursuant to the corporation's notice of meeting, or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the corporation who (i) is a stockholder of record at the time of giving of notice provided for in this Bylaw and at the time of the special meeting, (ii) is entitled to vote at the meeting (including any adjournment or postponement thereof), and (iii) complies with the notice procedures set forth in this Bylaw as to such nomination. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 14(a)(2) of this Bylaw with respect to any nomination (including the completed and signed questionnaire, representation and agreement required by Section 14 of this Bylaw) shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the 120th day prior to the date of such special meeting and not later than the close of business on the later of the 90th day prior to the date of such special meeting or, if the first public announcement of the date of such special meeting is less than 100 days prior to the date of such special meeting, the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall any adjournment or postponement of a special meeting or the announcement

thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in this Bylaw shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Bylaw. Except as otherwise provided by law, the Certificate of Incorporation or this Bylaw, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Bylaw and, if any proposed nomination or business is not in compliance with this Bylaw, to declare that such defective proposal or nomination shall be disregarded.

(2) For purposes of this Bylaw, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(3) Notwithstanding the foregoing provisions of this Bylaw, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; provided, however, that any references in this Bylaw to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations or proposals as to any other business to be considered pursuant to Section 14(a)(1)(B) or Section 14(b) of this Bylaw. Nothing in this Bylaw shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or this Bylaw.

SECTION 15. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the corporation, a person must complete and deliver (in accordance with the time periods prescribed for delivery of notice under Article II, Section 14 of these Bylaws) to the Secretary at the principal executive offices of the corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be in the form provided by the corporation, and shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such person (a) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or (2) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, (b) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection

with service or action as a director that has not been disclosed therein and (c) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the corporation.

Section 16. Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the Board of Directors may fix a record date, which record date, shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than 60 days prior to such action. Only stockholders as of the record date are entitled to receive such payments, distributions or other allotments or exercise such rights or take such other lawful action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

ARTICLE III DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

Section 2. Number, Election and Term of Office. The number of directors which shall constitute the Board of Directors shall be established from time to time by a vote of a majority of the entire Board of Directors; provided, however, that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office except with respect to directors elected by the holders of one or more outstanding series of preferred stock of the corporation upon the expiration of a default period in the payment of dividends to preferred stockholders. The Board of Directors shall be elected at the annual meeting of the stockholders and each director elected shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as hereinafter provided.

Section 3. Removal and Resignation. Any director or the entire Board of Directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as otherwise provided by law. Any director may resign at any time upon written notice to the corporation. Such written resignation shall take effect at the time specified therein, and if no time be specified, at the time of its receipt by the Chairman of the Board, Chief Executive Officer or the Secretary. Except as provided in Article II, Section 9(a) of the Bylaws, the acceptance of a resignation shall not be necessary to make it effective.

Section 4. Vacancies. Vacancies and newly created directorships resulting from any increase in the authorized number of directors may only be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until the next annual meeting of stockholders or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one

or more directors, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Each director chosen by any class or classes of stock or series thereof shall hold office until the next election of the class for which such directors have been chosen and until their successors shall be elected and qualified.

Section 5. Annual Meetings of Board of Directors. The annual meeting of each newly elected Board of Directors shall be held without other notice than this Bylaw as soon as practicable after the annual meeting of stockholders at such location as is convenient and established by the Chief Executive Officer.

Section 6. Other Meetings and Notice. Regular meetings, other than the annual meeting, of the Board of Directors may be held at such location as is convenient and without notice at such time and at such place as shall from time to time be determined by resolution of the Board of Directors. Special meetings of the Board of Directors may be called (i) by the Chairman of the Board or the Chief Executive Officer on at least 24 hours prior notice to each director, either personally, by telephone, by mail, by telegraph, by telecopy or by e-mail or (ii) upon the request of at least three directors, by the Secretary on at least 72 hours' prior notice. If notice of less than three days is given, it shall be oral, whether by telephone or in person, or sent by special delivery mail, facsimile, telegraph or e-mail. If mailed, the notice shall be given when deposited in the United States mail, postage pre-paid. Nothing herein contained shall preclude the directors from waiving notice as provided in Article IV hereof.

Section 7. Chairman of the Board; Lead Director. The Chairman of the Board shall be appointed by resolution of the Board of Directors and shall preside at all meetings of the Board of Directors and stockholders. If the offices of the Chief Executive Officer and Chairman are not separate or if the Chairman is not considered by the Board to be an independent director, the independent directors will elect one of their number to serve as Lead Director. The Lead Director will chair meetings of independent directors, will facilitate communications between other members of the Board and the Chief Executive Officer and Chairman, and will assume other duties which the independent directors as a whole may designate from time to time.

Section 8. Quorum, Required Vote and Adjournment. A majority of the total number of directors shall constitute a quorum for the transaction of business except as otherwise provided by statute or by the Certificate of Incorporation or these Bylaws. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by an applicable provision of law, by these Bylaws, by the Certificate of Incorporation or by a resolution of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 9. Emergency Management Committee. If as a result of a catastrophe or other emergency condition a quorum of any committee of the Board of Directors having power to act in the premises cannot readily be convened and a quorum of the Board of Directors cannot readily be convened, then all the powers and duties of the Board of Directors shall automatically vest and continue, until a quorum of the Board of Directors can be convened, in the Emergency Management Committee, which shall consist of all readily available members of the Board of Directors and two of whose members shall constitute a quorum. The Emergency Management Committee shall call a meeting of the Board of Directors as soon as circumstances permit for

the purpose of filling any vacancies on the Board of Directors and its committees and taking such other action as may be appropriate.

Section 10. Other Committees of the Board. The corporation shall have an Audit Committee, consisting of at least three independent directors of the corporation, a Compensation Committee, consisting of at least two independent directors of the corporation who have never been employees or officers of the corporation, and a Corporate Governance and Nominating Committee, consisting of at least three independent directors. The Board of Directors may, by resolution passed by a majority of the whole Board, designate other committees, each committee to consist of two or more of the directors of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of a committee. Such committee or committees (including the members thereof) shall serve at the pleasure of the Board of Directors and have such name or names and have as many members as may be determined from time to time by resolution adopted by the Board of Directors. Any member of the Board of Directors may participate in the meetings of any such committee, subject to the approval of the chairman of such committee. The Board of Directors shall adopt a charter for each committee it designates (other than special committees), and each committee shall assess the adequacy of such charter annually and recommend any changes to the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

Section 11. Limitations on Committee Powers. No committee of the Board, acting without concurrence of the full Board, shall have power or authority to:

- A. amend the Certificate of Incorporation or recommend the same to the stockholders;
- B. adopt an agreement of merger or consolidation or recommend the same to the stockholders;
- C. recommend to the stockholders the sale, lease, or exchange of all or substantially all of the corporation's property and assets;
- D. recommend to the stockholders a dissolution of the corporation or a revocation of a dissolution;
- E. amend or repeal these Bylaws;
- F. unless expressly so provided by resolution of the Board, (i) declare a dividend; or (ii) authorize the issuance of shares of the corporation of any class; and
- G. amend, alter, or repeal any resolution of the Board of Directors which, by its terms, provides that it shall not be amended, altered or repealed by any committee or, as applicable, a certain committee.

Section 12. Committee Rules. Each committee of the Board of Directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the Board of Directors designating such committee. Unless otherwise provided in such a resolution, the presence of at least a majority of the members of the committee shall be necessary to constitute a quorum. In the event that a member and that member's alternate, if alternates are designated by the Board of Directors as provided in Section 10 of this Article III, of such committee is or are absent or disqualified, the member or members

thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member.

Section 13. Use of Communications Equipment in Conducting Meetings. Members of the Board of Directors or any committee thereof may participate in and act at any meeting of the Board of Directors or committee through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this section shall constitute attendance and presence in person at the meeting of the person or persons so participating.

Section 14. Action Without a Meeting by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 15. Compensation. The Board of Directors shall have the authority to fix the compensation of directors by written resolution. Nothing herein shall be construed to preclude any director from serving the corporation in any other capacity as an officer, employee, agent or otherwise, and receiving compensation therefor.

Section 16. Books and Records. The Board of Directors shall cause to be kept a record containing the minutes of the proceedings of the meetings of the Board and of the stockholders, appropriate stock books and registers and such books of records and accounts as may be necessary for the proper conduct of the business of the corporation.

ARTICLE IV

WAIVER OF NOTICE

Whenever a notice is required to be given by any provision of law, by these Bylaws, or by the Certificate of Incorporation, a written waiver, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the sole and express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE V

OFFICERS

Section 1. Number and Authority. The Board of Directors of the corporation shall from time to time elect from its membership a Chairman of the Board. The Chairman of the Board may also be the Chief Executive Officer or any other officer of the corporation. The officers of the corporation shall consist of at least the following: (1) a Chief Executive Officer, (2) a Chief Financial Officer, (3) a Secretary and (4) a Treasurer.

The Board of Directors may appoint such other officers and agents, including but not limited to, a President, a Chief Operating Officer, one or more Presidents of Divisions or Business

Groups, one or more Executive Vice Presidents, Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries and Assistant Treasurers, as it shall at any time or from time to time deem necessary or advisable. Pursuant to Section 10 of this Article V, the Board of Directors hereby delegates to the Chief Executive Officer the right to appoint such Executive Vice Presidents (other than Executive Vice Presidents serving on the Executive Management Committee of the corporation) Senior Vice Presidents, Vice Presidents, Assistant Vice Presidents, Assistant Secretaries, Assistant Treasurers and agents, as he or she shall deem appropriate and necessary from time to time. The Board shall elect all other officers.

Any number of offices may be held by the same person, except that neither the Chief Executive Officer nor any President shall also hold the office of either Treasurer or Secretary. All officers, as between themselves and the corporation, shall have such authority and perform such duties in the management of the business and affairs of the corporation as may be provided in these Bylaws, or, to the extent not so provided, as may be prescribed by the Board of Directors or by the Chief Executive Officer.

Section 2. Election and Term of Office. The officers of the corporation (other than those appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) shall be elected at least once annually by the Board of Directors, and each such officer shall hold office until the next annual meeting of the Board of Directors or until a successor is duly elected and qualified or until his or her earlier resignation or removal as herein provided. Vacancies may be filled or new offices created and filled at any meeting of the Board of Directors (or by the Chief Executive Officer pursuant to Section 10 of this Bylaw).

Section 3. Removal. All officers and agents shall hold office at the pleasure of the Board of Directors, and any officer or agent elected or appointed by the Board of Directors (or appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw) may be removed at any time by the Board of Directors for cause or without cause at any regular or special meeting, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Officers and agents appointed by the Chief Executive Officer pursuant to Section 10 of this Bylaw may be removed at any time by the Chief Executive Officer for cause or without cause, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4. Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by resolution of the Board of Directors.

Section 5. Compensation. Compensation of all officers and agents (other than the Chief Executive Officer) shall be fixed by or in the manner prescribed by the Compensation Committee, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation. The compensation of the Chief Executive Officer shall be fixed by or in the manner prescribed by the Compensation Committee, but such compensation shall be subject to the approval of a majority of the independent directors of the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the directors, or he or she may delegate such duties to the Lead Director or, if the offices of the Chief Executive Officer and Chairman are separate, the Chief Executive Officer. The Chairman shall perform such other duties as are required of him by the Board of Directors and shall have no other duties except such as are delegated to him by the Board.

Section 7. Chief Executive Officer. The Chief Executive Officer of the corporation shall have the general charge of the business and affairs of the corporation and shall oversee the management of the business of the corporation. In the absence of the Chairman, or if designated to do so by the Board of Directors, he or she shall preside at all meetings of the stockholders and of the directors and shall exercise the other powers and perform the other duties of the Chairman or designate the executive officers of the corporation by whom such other powers shall be exercised and other duties performed. He or she shall see to it that all resolutions and orders of the Board of Directors are carried into effect, and he or she shall have full power of delegation in so doing. He or she shall have such other powers and perform such other duties as the Board of Directors or these Bylaws may, from time to time, prescribe. The Chief Executive Officer shall have the power to execute any and all instruments and documents on behalf of the corporation and to delegate to any other officer of the corporation the power to execute any and all such instruments and documents.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and its committees and all meetings of the stockholders and shall record all the proceedings of the meetings in a book or books to be kept for that purpose; he or she shall see that all notices required to be given by these Bylaws or by law are duly given in accordance with the provisions of these Bylaws or as required by law; he or she shall be the custodian of the records and of the corporate seal or seals of the corporation; he or she shall have authority to affix the corporate seal or seals to all documents, the execution of which, on behalf of the corporation, under its seal, is duly authorized, and when so affixed it may be attested by his signature; and in general, he or she shall perform all duties incident to the office of the Secretary of a corporation, and such other duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 9. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the corporation and shall deposit, or cause to be deposited, all moneys and other valuable effects in the name and to the credit of the corporation in such banks, trust companies, or other depositories as shall from time to time be selected by the Board of Directors. He or she shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; he or she shall render to the Chairman of the Board and to each member of the Board of Directors, whenever requested, an account of the Treasurer's actions and of the financial condition of the corporation. The Treasurer shall perform all of the duties incident to the office of the Treasurer of a corporation, and have such other powers and perform such other duties as the Board of Directors may, from time to time, prescribe. In the event the corporation shall fail to have a Treasurer at any time, then the duties of the Treasurer may be assumed and performed by the Chief Financial Officer and delegated by him to one or more assistant Treasurers.

Section 10. Other Officers, Assistant Officers and Agents. The Board of Directors may also elect or may delegate to the Chief Executive Officer the power to appoint such other officers, assistant officers and agents, as it may at any time or from time to time deem advisable, and any officers, assistant officers and agents so elected or appointed shall have such authority and perform such duties as the Board of Directors or the Chief Executive Officer may from time to time prescribe.

Section 11. Reservation of Authority. All other powers not expressly delegated or provided for herein, or in the Delaware General Corporation Law to any officer, are expressly reserved to the Board of Directors and may be delegated by it to any officer by resolution adopted from time to time by the Board of Directors.

ARTICLE VI

INDEMNIFICATION OF OFFICERS, DIRECTORS AND OTHERS

Section 1. Coverage. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative ("proceeding"), by reason of the fact that he or she is or was a director, officer of the corporation (which term shall include any predecessor corporation of the corporation) or is or was serving at the request of the corporation as a director, officer, employee, fiduciary or agent of another corporation or of a partnership, joint venture, trust or other enterprise of any type or kind, domestic or foreign, including service with respect to employee benefit plans ("indemnitee"), whether the basis of such proceeding is an alleged action in an official capacity as a director, officer, employee, fiduciary or agent or in any other capacity while serving as a director, officer, employee, fiduciary or agent, shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than said law permitted the corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement or other disposition) incurred or suffered by such indemnitee in connection therewith and such indemnification shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the indemnitee's heirs, executors and administrators. The right to indemnification conferred in this Bylaw shall be a contract right that vests at the time of such person's service to or at the request of the corporation and includes the right to be paid by the corporation the expenses incurred in defending any such proceeding in advance of its final disposition, such advances to be paid by the corporation within 20 days after the receipt by the corporation of a statement or statements from the claimant requesting such advance or advances from time to time; provided, however, that if the Delaware General Corporation Law requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to the corporation of an undertaking by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this Bylaw or otherwise.

Section 2. Claims. To obtain indemnification under this Bylaw, a claimant shall submit to the corporation a written request, including therein or therewith such documentation and information as is reasonably available to the claimant and is reasonably necessary to determine whether and to what extent the claimant is entitled to indemnification. Upon such written request by a claimant for indemnification, a determination, if required by applicable law, with respect to the claimant's entitlement thereto shall be made as follows: (a) if requested by the claimant, by Independent Counsel (as defined below), or (b) if no request is made by the claimant for a determination by Independent Counsel, (i) by the Board of Directors by a majority vote of a quorum consisting of Disinterested Directors (as defined below), or (ii) if a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, such quorum of Disinterested Directors so directs, by Independent Counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the claimant, or (iii) if a quorum of Disinterested Directors so directs, by the stockholders of the corporation. In the event the determination of entitlement to indemnification is to be made by Independent Counsel at the request

of the claimant, the Independent Counsel shall be selected by the Board of Directors unless there shall have occurred within two years prior to the date of the commencement of the action, suit or proceeding for which indemnification is claimed a "Change of Control" as defined in the 2008 Office Depot, Inc. Bonus Plan for Executive Management Employees, in which case the Independent Counsel shall be selected by the claimant unless the claimant shall request that such selection be made by the Board of Directors. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within 10 days after such determination.

For purposes of this Bylaw:

"Disinterested Director" means a director of the corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

"Independent Counsel" means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant's rights under this Bylaw.

Section 3. Enforcement of Claims. If a claim under Section 1 of this Bylaw is not paid in full by the corporation within 60 days after a written claim pursuant to Section 2 of this Bylaw has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the corporation) that the claimant has not met the standard of conduct which makes it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the corporation. Neither the failure of the corporation (including its Board of Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct. If a determination shall have been made pursuant to this Section 2 that the claimant is entitled to indemnification, the corporation shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 3. The corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 3 that the procedures and presumptions of this Bylaw are not valid, binding and enforceable and shall stipulate in such proceeding that the corporation is bound by all the provisions of this Bylaw.

Section 4. Enforceability. If any provision or provisions of this Bylaw shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Bylaw (including, without limitation, each portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable, that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Bylaw

(including, without limitation, each such portion of any paragraph of this Bylaw containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

Section 5. Rights Not Exclusive. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Bylaw (i) shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or Disinterested Directors or otherwise and (ii) cannot be terminated by the corporation, the Board of Directors or the stockholders of the corporation with respect to a person's service prior to the date of such termination. No repeal or modification of this Bylaw shall in any way diminish or adversely affect the rights of any current or former director, officer, employee or agent of the corporation hereunder in respect of any occurrence or matter arising prior to any such repeal or modification.

Section 6. Employees and Agents. Persons who are not covered by the foregoing provisions of this Article VI and who are or were employees or agents of the corporation may be indemnified and may have their expenses paid to the extent and subject to such terms and conditions as may be authorized at any time or from time to time by the Board of Directors or the Chief Executive Officer.

Section 7. Insurance. The corporation may purchase and maintain insurance on its own behalf and on behalf of any person who is or was a director, officer, employee, fiduciary or agent of the corporation or who is serving or has served at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify such person against such liability under this Article VI.

Section 8. Merger or Consolidation. For purposes of this Article VI, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article VI with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.

Section 9. Notices. Any notice, request or other communication required or permitted to be given to the corporation under this Article VI shall be in writing and either delivered in person or sent by telecopy, telex, telegram, overnight mail or courier service, or certified or registered mail, postage prepaid, return receipt requested, to the Secretary and shall be effective only upon receipt by the Secretary.

ARTICLE VII
CERTIFICATES OF STOCK

Section 1. Form. The shares of capital stock of the corporation shall be represented by certificates, provided that the Board of Directors of the corporation may provide by a resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Every holder of capital stock in the corporation represented by certificates shall be entitled to have a certificate for shares of capital stock of the corporation signed by or in the name of the corporation by the Chairman of the Board, the President or a Vice President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the corporation, certifying the number of shares owned by such holder in the corporation and registered in certificated form. Any or all such signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed, or whose facsimile signature has been placed upon, any such certificate or certificates shall cease to be such officer, transfer agent or registrar of the corporation whether because of death, resignation or otherwise before such certificate or certificates have been delivered by the corporation, such certificate or certificates may nevertheless be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures have been used thereon had not ceased to be such officer, transfer agent or registrar of the corporation. All certificates for shares shall be consecutively numbered or otherwise identified. The name of the person to whom certificated or uncertificated shares are issued, together with the number of shares and date of issue, shall be entered on the books of the corporation. Shares of stock of the corporation shall only be transferred on the books of the corporation by the holder of record thereof or by such holder's attorney duly authorized in writing and, (i) if such shares are certificated, upon surrender to the corporation of the certificate or certificates for such shares endorsed by the appropriate person or persons, with such evidence of the authenticity of such endorsement, transfer, authorization and other matters as the corporation may reasonably require, and accompanied by all necessary stock transfer stamps, or (ii) upon proper instructions from the holder of uncertificated shares. In the event of such transfer of certificated shares, it shall be the duty of the corporation to issue a new certificate or evidence of the issuance of uncertificated shares to the person entitled thereto, cancel the old certificate or certificates and record the transaction on its books. Upon receipt of proper transfer instructions from the holder of uncertificated shares, the corporation shall cancel such uncertificated shares and issue new equivalent uncertificated shares or certificated shares to the person entitled thereto and record such transaction upon its books. Except as otherwise provided by law, the Board of Directors may make or adopt such additional rules and regulations, not inconsistent with these Bylaws, as it may deem expedient, concerning the issue, transfer and registration of securities of the corporation. The Board of Directors may appoint or authorize any officer or officers to appoint, one or more transfer agents or registrars or both in connection with the transfer of any class or series of securities of the corporation.

Section 2. Lost Certificates. The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates previously issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his or her legal representative, to indemnify the corporation or to give the corporation a bond sufficient to indemnify the corporation against any claim that

may be made against the corporation on account of the loss, theft or destruction of any such certificate or the issuance of such new certificate.

Section 3. Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends or other distributions, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner, and as the person to hold liable for calls and assessments. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Dividends and Distributions. The Board shall have full power and discretion pursuant to law, at any regular or special meeting, subject to the provisions of the Certificate of Incorporation or the terms of any other corporate document or instrument, to determine what, if any, dividends or distributions shall be declared and paid or made upon or with respect to outstanding shares of the capital stock of the corporation. Dividends may be paid in cash, bonds, property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2. Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers or agent, or agents of the corporation, and in such manner, as shall be determined by resolution of the Board of Directors or a duly authorized committee thereof.

Section 3. Contracts. The Board of Directors may authorize any officer or officers or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4. Loans. Subject to applicable laws limiting or prohibiting the corporation's ability to make such loans, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this section contained shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

Section 6. Corporate Seal. The Board of Directors may provide a corporate seal, which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7. Voting Securities Owned By Corporation. Voting securities in any other Company held by the corporation shall be voted by the Chairman of the Board or the Chief Executive Officer, unless the Board of Directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with or without general power of substitution.

Section 8. General and Special Bank Accounts. The Board of Directors may authorize from time to time the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as the Board may designate or as may be designated by any officer or officers of the corporation to whom such power of designation may be delegated by the Board from time to time. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these Bylaws, as it may deem expedient.

Section 9. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10. Election Out of Section 203. The corporation expressly elects not to be governed by Section 203 of the General Corporation Law of Delaware. The Bylaw amendment adopting this provision shall not be further amended by the Board of Directors of the corporation.

ARTICLE IX AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the Board of Directors by a majority vote; provided that these Bylaws and any other Bylaws amended or adopted by the Board of Directors may be amended, may be reinstated, and new Bylaws may be adopted, by the stockholders of the corporation entitled to vote at the time for the election of directors provided that notice of the proposed change was given in the corporation's notice of meeting.

Rule 13a-14(a)/15d-14(a) Certification

I, Steve Odland, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Office Depot, Inc.;
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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm 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.

Date: July 30, 2008

/s/ Steve Odland

Steve Odland

Chief Executive Officer and Chairman, Board of Directors

Rule 13a-14(a)/15d-14(a) Certification

I, Charles E. Brown, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Office Depot, Inc.;
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 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 and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's independent registered public accounting firm 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.

Date: July 30, 2008

/s/ Charles E. Brown

Charles E. Brown
President, International and Acting Chief Financial
Officer

Office Depot, Inc.**Certification of CEO and CFO 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 on Form 10-Q of Office Depot, Inc. (the "Company") for the quarterly period ended June 28, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Steve Odland, as Chief Executive Officer of the Company, and Charles E. Brown, as Acting Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to each officer's 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.

/s/ Steve Odland

Name: Steve Odland

Title: Chief Executive Officer

Date: July 30, 2008

/s/ Charles E. Brown

Name: Charles E. Brown

Title: Acting Chief Financial Officer

Date: July 30, 2008

A signed original of this written statement required by Section 1350 of Title 18 of the United States Code has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished as an exhibit to the Report pursuant to Item 601(b)(32) of Regulation S-K and Section 1350 of Title 18 of the United States Code and, accordingly, is not being filed with the Securities and Exchange Commission as part of the Report and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934 (whether made before or after the date of the Report, irrespective of any general incorporation language contained in such filing).