

HAWKINS INC
Form S-8
March 02, 2005

As filed with the Securities and Exchange Commission on March 2, 2005

Registration No.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM S-8

**REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933**

HAWKINS, INC.

(Exact name of Registrant as specified in its charter)

Minnesota

(State or other jurisdiction of
incorporation or organization)

**3100 East Hennepin Avenue
Minneapolis, Minnesota**

(Address of principal executive offices)

41-0771293

(I.R.S. Employer
Identification No.)

55413

(Zip Code)

Hawkins, Inc. 2004 Omnibus Stock Plan

(Full title of the plan)

Marvin E. Dee

Edgar Filing: HAWKINS INC - Form S-8

Vice President, Chief Financial Officer, Secretary and Treasurer

Hawkins, Inc.

3100 East Hennepin Avenue

Minneapolis, Minnesota 55413

(Name and address of agent for service)

Copies to:

W. Morgan Burns

Faegre & Benson LLP

2200 Wells Fargo Center

90 South Seventh Street

Minneapolis, Minnesota 55402-3901

Calculation of Registration Fee

Title of securities to be registered	Amount to be registered (1)	Proposed maximum offering price per share (2)	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$.05 par value per share	350,000 shares	\$ 11.97	\$ 4,189,500.00	\$ 494.00

(1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement includes an indeterminate number of additional shares as may be issuable as a result of a stock split, stock dividend or similar adjustment of the outstanding common shares of the Registrant.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(h)(1) under the Securities Act, based on the average of the high and low sales prices per share of the Registrant's common stock on February 28, 2005, as reported on the Nasdaq National Market.

HAWKINS, INC.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents of Hawkins, Inc. filed with the Securities and Exchange Commission (the Commission) pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are, as of their respective dates, incorporated herein by reference and made a part hereof:

- (1) The Annual Report on Form 10-K of Hawkins, Inc. for the fiscal year ended March 28, 2004 filed pursuant to Section 13 of the Exchange Act (No. 0-7647);
- (2) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Annual Report referred to in (1) above; and
- (3) The description of the Registrant's Common Stock which is included in registration statements and reports filed under the Exchange Act from time to time.

All reports and other documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all of the shares of Common Stock offered have been sold or that deregisters all shares of the Common Stock then remaining unsold shall be deemed to be incorporated by reference in and a part of this Registration Statement from the date of filing of such documents.

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

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's By-laws provide that each director and officer of the Registrant shall be indemnified by the Registrant in the manner and to the extent allowed by Minnesota Statutes Section 302A.521. Section 302A.521 of the Minnesota Statutes provides in substance that, unless prohibited by its articles of incorporation or bylaws, a corporation must indemnify an officer or director who is made or threatened to be made a party to a proceeding by reason of his or her official capacity against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements and reasonable expenses, including attorneys' fees and disbursements, incurred by such person in connection with the proceeding, if certain criteria are met. These criteria, all of which must be met by the person complained of in the proceeding, are (a) that such person has not been indemnified by another organization for the same judgments, penalties, fines, settlements and expenses; (b) that such person must have acted in good faith; (c) that no improper personal benefit was obtained by such person and such person satisfied certain statutory conflicts of interest provisions, if applicable; (d) that in the case of a criminal proceeding, such person had no reasonable cause to believe that the conduct was unlawful; and (e) that such person must have acted in a manner

he or she reasonably believed was in the best interests of the corporation or, in certain limited circumstances, not opposed to the best interests of the corporation. The determination as to eligibility for indemnification is made by the members of the corporation's board of directors or a committee of the board who are at the time not parties to the proceedings under consideration, by special legal counsel, by the shareholders who are not parties to the proceedings or by a court.

The Registrant's Articles of Incorporation provide that a director of the Registrant shall not be personally liable to the Registrant or its shareholders for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation is not permitted under Minnesota Statutes Chapter 302A.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act of 1933, and is therefore unenforceable.

The Registrant maintains a director and officer insurance policy to cover the Registrant, its directors and its officers against certain liabilities.

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

Exhibit

- 4.1 Amended and Second Restated Articles of Incorporation as amended through February 27, 2001 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the year ended September 30, 2001).
- 4.2 Second Amended and Superseding By-Laws as amended through February 15, 1995 (incorporated herein by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended October 1, 1995).
- 5 Opinion of Faegre & Benson LLP, counsel for the Registrant.
- 23.1 Consent of Faegre & Benson LLP (included in Exhibit 5 to this Registration Statement).
- 23.2 Consent of Deloitte & Touche LLP.
- 24 Powers of Attorney (included with signatures to this Registration Statement).
- 99.1 Hawkins, Inc. 2004 Omnibus Stock Plan (incorporated herein by reference to Appendix B to the Company's Proxy Statement filed with the Commission on July 23, 2004).
- 99.2

Edgar Filing: HAWKINS INC - Form S-8

Form of Hawkins, Inc. 2004 Omnibus Stock Plan Restricted Stock Agreement (incorporated herein by reference to Exhibit 10.2 to the Registrant's Form 10-Q for the quarter ended September 30, 2004).

II-2

Item 9. Undertakings.

A. The Registrant hereby undertakes:

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

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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

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

provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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

B. The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such

indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

II-4

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the city of Minneapolis, State of Minnesota on the 2nd day of March, 2005.

HAWKINS, INC.

By */s/ Marvin E. Dee*
Marvin E. Dee
Vice President, Chief Financial Officer,
Secretary
and Treasurer

POWER OF ATTORNEY

We, the undersigned officers and directors of Hawkins, Inc., hereby severally constitute John R. Hawkins and Marvin E. Dee, and each of them singly, as true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names, in the capacities indicated below the registration statement filed herewith and any amendments to said registration statement, and generally to do all such things in our name and behalf in our capacities as officers and directors to enable Hawkins, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below on March 2, 2005 by the following persons in the capacities indicated:

Name	Title
<i>/s/ John R. Hawkins</i> John R. Hawkins <i>Principal Executive Officer</i>	Chairman of the Board, Chief Executive Officer and Director
<i>/s/ Marvin E. Dee</i> Marvin E. Dee <i>Principal Financial and Accounting Officer</i>	Vice President, Chief Financial Officer, Secretary and Treasurer
<i>/s/ Dean L. Hahn</i> Dean L. Hahn	Director
<i>/s/ John S. McKeon</i> John S. McKeon	Director
<i>/s/ Duane M. Jergenson</i> Duane M. Jergenson	Director
	A majority of directors

Edgar Filing: HAWKINS INC - Form S-8

/s/ G. Robert Gey
G. Robert Gey

Director

/s/ Daryl I. Skaar
Daryl I. Skaar

Director

INDEX TO EXHIBITS

Exhibit

- 4.1 Amended and Second Restated Articles of Incorporation as amended through February 27, 2001 (incorporated herein by reference to Exhibit 3.1 to the Registrant's Annual Report on Form 10-K for the year ended September 30, 2001).
- 4.2 Second Amended and Superseding By-Laws as amended through February 15, 1995 (incorporated herein by reference to Exhibit 3.2 to the Company's Annual Report on Form 10-K for the year ended October 1, 1995).
- 5 Opinion of Faegre & Benson LLP, counsel for the Registrant. Electronically Filed
- 23.1 Consent of Faegre & Benson LLP (included in Exhibit 5 to this Registration Statement)
- 23.2 Consent of Deloitte & Touche LLP Electronically Filed
- 24 Powers of Attorney (included with signatures to this Registration Statement).
- 99.1 Hawkins, Inc. 2004 Omnibus Stock Plan (incorporated herein by reference to Appendix B to the Company's Proxy Statement filed with the Commission on July 23, 2004).
- 99.2 Form of Hawkins, Inc. 2004 Omnibus Stock Plan Restricted Stock Agreement (incorporated herein by reference to Exhibit 10.2 to the Registrant's Form 10-Q for the quarter ended September 30, 2004).

Master III 3/7/2011 10,190 101.90 Icahn Master III 3/8/2011 6,357 63.57 Icahn Master III 3/10/2011 6,543 65.43
 Icahn Master III 3/11/2011 5,095 50.95 Icahn Master III 3/14/2011 6,773 67.73 Icahn Master III 3/16/2011 17,141
 171.41 Icahn Master III 3/17/2011 10,189 101.89 Icahn Master III 3/18/2011 10,378 103.78 Icahn Master III
 3/23/2011 1,243 12.43 Icahn Master III 4/26/2011 11,944 119.44 Icahn Master III 4/27/2011 7,569 75.69 Icahn
 Master III 4/28/2011 79 0.79 Icahn Master III 4/29/2011 16,382 163.82 Icahn Master III 5/12/2011 29,945 299.45
 Icahn Master III 5/13/2011 24,984 249.84 Icahn Master III 5/16/2011 327 3.27 Icahn Master III 5/17/2011 5,921
 59.21 Icahn Master III 5/18/2011 43,250 432.50 Icahn Master III 5/19/2011 54,822 548.22 Icahn Master III 5/20/2011
 54,846 548.46 Icahn Master III 5/23/2011 38,415 384.15 Icahn Master III 5/24/2011 21,663 216.63 Icahn Master III
 5/25/2011 40,055 400.55 Icahn Master III 5/26/2011 27,833 278.33 Icahn Master III 6/1/2011 3,373 33.73 Icahn
 Master III 6/2/2011 10,570 105.70 Icahn Master III 6/3/2011 110,158 1,101.58 Icahn Master III 6/6/2011 23,442
 234.42 Icahn Master III 6/7/2011 64,836 648.36 Icahn Master III 6/8/2011 54,066 540.66 Icahn Master III 6/9/2011
 89,459 894.59 ANNEX B ATTACHMENT 1 INFORMATION ABOUT NOMINEES ----- NAME:
 Alexander J. Denner, Ph.D. AGE: 41 BUSINESS Icahn Associates Corp., 767 Fifth Avenue, 47th Floor, ADDRESS:
 New York, NY 10153 RESIDENCE 565 Stanwich Road ADDRESS: Greenwich, CT 06831 PRINCIPAL
 OCCUPATION See below OR EMPLOYMENT: CITIZENSHIP: United States of America Dr. Denner has an
 interest in the election of directors at the Annual Meeting indirectly through his profit interests in the Shares held by
 the Direct Beneficial Owners as described below. Other than in respect of such profit interests, Dr. Denner does not,
 and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Dr. Denner

has a participatory interest in the profits attributable to the Shares beneficially owned by the Direct Beneficial Owners and their affiliates equal to 5% of an amount equal to (x) such profits minus (y) an amount equal to a return on the Direct Beneficial Owners' and their affiliates' investment in the Shares of 8% per annum, compounded annually. Dr. Denner's principal occupation is serving as Managing Director of entities affiliated with Carl C. Icahn, including Icahn Partners, Icahn Master, Icahn Master II and Icahn Master III (collectively, the "Funds"). The Funds are private investment funds. Dr. Denner has served in this position since August 2006. From April 2005 to May 2006, Dr. Denner served as a portfolio manager specializing in healthcare investments for Viking Global Investors. Previously, he served in a variety of roles at Morgan Stanley, beginning in 1996, including as portfolio manager of healthcare and biotechnology mutual funds. Dr. Denner was the chairman of the Executive Committee of the Board of Directors of ImClone Systems Incorporated, a publicly traded biopharmaceutical company, and a director of ImClone Systems Incorporated from April 2006 until the company was purchased in December 2008. He served on the Board of Adventrx Pharmaceuticals Inc., a publicly traded biopharmaceutical company from October 2006 to October 2009. In addition, Dr. Denner has served as a director of Biogen Idec Pharmaceuticals, a publicly traded biopharmaceutical company from June, 2009 until the present, as a director of Amylin Pharmaceuticals, Inc., a publicly traded biopharmaceutical company from June 2009 until the present, and as a director of Enzon Pharmaceuticals, a publicly traded biopharmaceutical company from May 2009 until the present, and as Chairman of the Board of Directors of Enzon Pharmaceuticals from July, 2009 until the present. Dr. Denner received his S.B. degree from the Massachusetts Institute of Technology and his M.S., M.Phil., and Ph.D. degrees from Yale University. ANNEX B ATTACHMENT 2 INFORMATION ABOUT NOMINEES ----- NAME: Richard C. Mulligan, Ph.D AGE: 56 BUSINESS Harvard Institutes of Medicine, Rm 407 ADDRESS: 4 Blackfan Circle Boston, MA 02115 RESIDENCE 35 Foster Street ADDRESS: Cambridge, MA 02138 PRINCIPAL OCCUPATION See below OR EMPLOYMENT: CITIZENSHIP: United States of America Dr. Mulligan does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Dr. Mulligan has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D. Dr. Mulligan's principal occupation is serving as the Mallinckrodt Professor of Genetics at Harvard Medical School, and Director of the Harvard Gene Therapy Initiative. Professor Mulligan received his B.S. degree from the Massachusetts Institute of Technology, and his Ph.D. from the Department of Biochemistry at Stanford University School of Medicine. After receiving postdoctoral training at the Center for Cancer Research at MIT, Professor Mulligan joined the MIT faculty and subsequently was appointed Professor of Molecular Biology and Member of the Whitehead Institute for Biomedical Research before moving to Children's Hospital and Harvard in 1996. His honors include the MacArthur Foundation Prize, the Rhodes Memorial Award of the American Association for Cancer Research, the ASMB-Amgen Award, and the Nagai Foundation International Prize. Dr. Mulligan served as a director of ImClone System Incorporated, a publicly traded biopharmaceutical company, from September 2006 until November 2008, and as a member of Scientific Advisory Board and Executive Committee. In addition, Dr. Mulligan has served as a director of Biogen Idec Pharmaceuticals, a publicly traded biopharmaceutical company from June 2009 until the present, as a director of Enzon Pharmaceuticals, a publicly traded biopharmaceutical company from May 2009 until the present, and as a director of Cellectis SA, a biotechnology company which specializes in genome engineering, since 2007. He has also served on the National Institutes of Health's Recombinant DNA Advisory Committee and on the U.S. Food and Drug Administration Biological Response Modifiers Advisory Committee. ANNEX B ATTACHMENT 3 INFORMATION ABOUT NOMINEES ----- NAME: Professor Lucian Bebchuk AGE: 55 BUSINESS 22 Sacramento Street ADDRESS: Cambridge, MA 02138 RESIDENCE 1545 Massachusetts Avenue ADDRESS: Cambridge, MA 02138 PRINCIPAL OCCUPATION See below OR EMPLOYMENT: CITIZENSHIP: United States of America Professor Bebchuk does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Professor Bebchuk has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D. Professor Bebchuk's principal occupation is serving as the William J. Friedman and Alicia Townsend Friedman Professor of Law, Economics, and Finance and Director of the Program on Corporate Governance at Harvard Law School. Professor Bebchuk is also a Research Associate of the National Bureau of Economic Research and Inaugural Fellow of the European Corporate Governance Network. Trained in both law and economics, Professor Bebchuk holds an LL.M. and S.J.D. from Harvard Law School and an M.A. and a Ph.D. in Economics from the Harvard Economics Department. His research focuses on corporate governance, law and finance, and law and economics. Upon electing him to membership in 2000, the American Academy of Arts and

Sciences cited him as "[o]ne of the nation's leading scholars of law and economics," who "has made major contribution to the study of corporate control, governance, and insolvency." The author of more than one hundred research papers, Professor Bebchuk's work has appeared in the top academic journals in law, in economics, and in finance. His widely acclaimed book, Pay without Performance: the Unfulfilled Promise of Executive Compensation, co-authored with Jesse Fried, was published in 2004. Professor Bebchuk has been a frequent contributor to policy-making, practice, and public debate in the fields of corporate governance and financial regulation. He has appeared in hearings and roundtables before the Senate Finance Committee, the House of Representatives Committee of Financial Services, and the SEC; has advised publicly traded firms, governmental authorities both in and outside the U.S., and law firms; has authored numerous op-ed pieces, including in the Wall Street Journal, the New York Times, and the Financial Times; and serves on the board of directors of OJSC MMC Norilsk Nickel, the world's largest producer of nickel and palladium. He was included in the list of "100 most influential players in corporate governance" of Directorship, the "100 most influential people in finance" of Treasury & Risk Management, and the list of top-10 "governance stars" of Global Proxy Watch. Professor Bebchuk served as President of the American Law and Economics Association and Chair of the Business Association Section of the American Association of Law Teachers. He is a Vice-President of the Western Economics Association International and the founding Director of the SSRN Corporate Governance Network. ANNEX B ATTACHMENT 4 INFORMATION ABOUT NOMINEES

----- NAME: Eric J. Ende, M.D. AGE: 43 BUSINESS 6231 PGA Blvd, STE 104-161 ADDRESS: Palm Beach Gardens, FL 33418 RESIDENCE 102 Via Palacio ADDRESS: Palm Beach Gardens, FL 33418 PRINCIPAL OCCUPATION See below OR EMPLOYMENT: CITIZENSHIP: United States of America Dr. Ende does not, and his associates do not, own, beneficially or of record, any shares of capital stock of the Corporation. Dr. Ende has an interest in the election of directors at the Annual Meeting pursuant to the Nominee Agreement attached hereto as Annex D. Dr. Ende's principal occupation is serving as President of Ende Consulting Group, which is focused on biotechnology industry consulting, since 2009. Since 2008, Dr. Ende has also served as a Managing Partner of Silverback Group, which is focused on identifying, evaluating and participating in various types of investment opportunities, including venture capital, real estate and financings. From 2002 through 2008, Dr. Ende was the senior biotechnology analyst at Merrill Lynch. From 2000 to 2002, he was the senior biotechnology analyst at Banc of America Securities. From 1997 to 2000, he was a biotechnology analyst at Lehman Brothers. During Dr. Ende's career as a biotechnology analyst, he was named to Institutional Investor's AllAmerica Equity Research Team six times as well as to The Greenwich Survey list of top analysts. He was also named Top Stock Picker by The Street.com and Best Earnings Estimator by Forbes.com. Dr. Ende served as a director of Genzyme Corporation from 2010 until it was acquired by Sanofi-Aventis in 2011. Dr. Ende received an M.B.A. in Finance & Accounting from New York University's Stern Business School in 1997, an M.D. from Mount Sinai School of Medicine in 1994, and a B.S. in Biology and Psychology from Emory University in 1990. ANNEX C The written consent of each Nominee to, among other things, being named as a nominee for election as a director of the Corporation and to serve as a director if elected is attached to this Annex C. If the Corporation requests original signed statements of consents, the Record Holder will provide them. ANNEX C ATTACHMENT 1 CONSENT OF NOMINEE The undersigned hereby consents to being named as a nominee for election as a director of Forest Laboratories, Inc. (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II LP ("Icahn Master II"), Icahn Partners Master Fund III LP ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from stockholders of the Company to be voted at the 2011 annual meeting of stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected. The undersigned hereby consents to the disclosure of all information relating to the undersigned as would be required to be disclosed in solicitations of proxies for the election of the undersigned as a director pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in any such solicitation made by the Company. The undersigned, if elected, intends to tender, promptly following the undersigned's election or reelection, an irrevocable resignation effective upon the undersigned's failure to receive the required vote for reelection at the next meeting at which the undersigned would face reelection and upon acceptance of such resignation by the board of directors, in accordance with the Company's Board Practice on Director Elections. Dated: June 9, 2011 /s/ Alexander J. Denner ----- Name:

Alexander J. Denner ANNEX C ATTACHMENT 2 CONSENT OF NOMINEE The undersigned hereby consents to being named as a nominee for election as a director of Forest Laboratories, Inc. (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II LP ("Icahn Master II"), Icahn Partners Master Fund III LP ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from stockholders of the Company to be voted at the 2011 annual meeting of stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected. The undersigned hereby consents to the disclosure of all information relating to the undersigned as would be required to be disclosed in solicitations of proxies for the election of the undersigned as a director pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in any such solicitation made by the Company. The undersigned, if elected, intends to tender, promptly following the undersigned's election or reelection, an irrevocable resignation effective upon the undersigned's failure to receive the required vote for reelection at the next meeting at which the undersigned would face reelection and upon acceptance of such resignation by the board of directors, in accordance with the Company's Board Practice on Director Elections.

Dated: June 8, 2011 /s/ Richard Mulligan ----- Name: Richard Mulligan ANNEX C ATTACHMENT 3 CONSENT OF NOMINEE The undersigned hereby consents to being named as a nominee for election as a director of Forest Laboratories, Inc. (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II LP ("Icahn Master II"), Icahn Partners Master Fund III LP ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from stockholders of the Company to be voted at the 2011 annual meeting of stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected. The undersigned hereby consents to the disclosure of all information relating to the undersigned as would be required to be disclosed in solicitations of proxies for the election of the undersigned as a director pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in any such solicitation made by the Company. The undersigned, if elected, intends to tender, promptly following the undersigned's election or reelection, an irrevocable resignation effective upon the undersigned's failure to receive the required vote for reelection at the next meeting at which the undersigned would face reelection and upon acceptance of such resignation by the board of directors, in accordance with the Company's Board Practice on Director Elections. Dated: June 9, 2011 /s/ Lucian A. Bebchuk

----- Name: Lucian A. Bebchuk ANNEX C ATTACHMENT 4 CONSENT OF NOMINEE The undersigned hereby consents to being named as a nominee for election as a director of Forest Laboratories, Inc. (the "Company"), in the proxy statement to be filed with the Securities and Exchange Commission and distributed to stockholders of the Company by High River Limited Partnership ("High River"), Icahn Partners LP ("Icahn Partners"), Icahn Partners Master Fund LP ("Icahn Master"), Icahn Partners Master Fund II LP ("Icahn Master II"), Icahn Partners Master Fund III LP ("Icahn Master III", and collectively with High River, Icahn Partners, Icahn Master and Icahn Master II, the "Holders") and in other materials in connection with the solicitation of proxies by the Holders from stockholders of the Company to be voted at the 2011 annual meeting of stockholders of the Company and any adjournment thereof, and further consents to serve as a director of the Company, if elected. The undersigned hereby consents to the disclosure of all information relating to the undersigned as would be required to be disclosed in solicitations of proxies for the election of the undersigned as a director pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in any such solicitation made by the Company. The undersigned, if elected, intends to tender, promptly following the undersigned's election or reelection, an irrevocable resignation effective upon the undersigned's failure to receive the required vote for reelection at the next meeting at which the undersigned would face reelection and upon acceptance of such resignation by the board of directors, in accordance with the Company's Board Practice on Director Elections. Dated: June 8, 2011 /s/ Eric Ende ----- Name: Eric Ende ANNEX D Attached to this Annex D is the form of agreement to be entered into by the Nominees (other than Dr. Denner) and an affiliate of the Record Holder pursuant to which such affiliate has agreed to pay certain fees to such Nominees and to indemnify such Nominees with respect to certain costs incurred by such Nominees in connection with the proxy contest relating to the Annual Meeting. ICAHN CAPITAL LP June 9, 2011 To the

undersigned potential nominee: This will confirm our understanding as follows: You agree that you are willing, should we so elect, to become a member of a slate of nominees (the "Slate") to stand for election as directors of Forest Laboratories, Inc. ("Forest Laboratories") in connection with a proxy contest with management of Forest Laboratories in respect of the election of directors of Forest Laboratories at the 2011 Annual Meeting of Shareholders of Forest Laboratories (the "Annual Meeting"), expected to be held in the Summer of 2011, or a special meeting of shareholders of Forest Laboratories called for a similar purpose (the "Proxy Contest"). Icahn Capital LP ("Icahn") agrees to pay the costs of the Proxy Contest. In addition, upon our filing of a preliminary proxy statement with the SEC, which indicates that Icahn, or an affiliate thereof, intends to nominate you for election at the Annual Meeting, you will be entitled to be paid \$25,000 by Icahn unless you are elected to serve as a director of Forest Laboratories at the Annual Meeting or a special meeting of shareholders of Forest Laboratories called for a similar purpose or in connection with a settlement of the Proxy Contest by Icahn and Forest Laboratories, in which case you will not receive any payment from Icahn in connection with the Proxy Contest. Payment to you pursuant to this paragraph, if any, will be made by Icahn, subject to the terms hereof, upon the earliest of (i) the certification of the results of the election in respect of the Proxy Contest, (ii) the settlement of the Proxy Contest by Icahn and Forest Laboratories, or (iii) the withdrawal of the Proxy Contest by Icahn. You understand that it may be difficult, if not impossible, to replace nominees who, such as yourself, have agreed to serve on the Slate and later change their minds and determine not to seek election. Accordingly, the Slate is relying upon your agreement to seek election. In that connection, you are being supplied with a questionnaire in which you will provide Icahn with information necessary for Icahn to make appropriate disclosure both to Forest Laboratories and for use in creating the proxy material to be sent to shareholders of Forest Laboratories and to be filed with the Securities and Exchange Commission. You have agreed that (i) you will immediately complete and sign the questionnaire and return it to Mark DiPaolo, Assistant General Counsel, Icahn Enterprises LP, 767 Fifth Avenue, Suite 4700, New York, NY 10153, Tel: (212) 702-4361, Fax: (212) 688-1158, Email: mdipaolo@sfire.com and (ii) your responses to the questions contained therein will be true and correct in all respects. In addition, you have agreed that, concurrently with your execution of this letter, you will execute the attached instrument directed to Forest Laboratories informing Forest Laboratories that you consent to being nominated by Icahn, or an affiliate thereof, for election as a director of Forest Laboratories and, if elected, consent to serving as a director of Forest Laboratories and consent to the disclosure of certain information relating to you as would be required to be disclosed in solicitations of proxies for your election as a director pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended, in any such solicitation made by the Company. You also will make a statement in the attached instrument that if elected, you intend to tender, promptly following your election or reelection, an irrevocable resignation effective upon your failure to receive the required vote for reelection at the next meeting at which you would face reelection and upon acceptance of such resignation by the board of directors, in accordance with the Company's Board Practice on Director Elections. Upon being notified that we have chosen you, we may forward that instrument and your completed questionnaire (or summaries thereof) to Forest Laboratories. Icahn hereby agrees that, so long as you actually serve on the Slate, Icahn will defend, indemnify and hold you harmless from and against any and all losses, damages, penalties, judgments, awards, liabilities, costs, expenses and disbursements (including, without limitation, reasonable attorneys' fees, costs, expenses and disbursements) incurred by you in the event that (i) you become a party, or are threatened to be made a party, to any civil, criminal, administrative or arbitral action, suit or proceeding, and any appeal thereof relating solely to your role as a nominee for director of Forest Laboratories on the Slate (a "Proceeding") or (ii) you are called to testify or give a deposition in any Proceeding (whether or not you are a party or are threatened to be made a party to such Proceeding), including, in each case, the advancement to you of all reasonable attorneys' costs and expenses incurred by you in connection with any Proceeding. Your right of indemnification hereunder shall continue (i) in the event that Icahn determines to withdraw the Slate or remove you from the Slate and (ii) after the election has taken place but only for events which occur prior to such election and subsequent to the date hereof. Anything to the contrary herein notwithstanding, Icahn is not indemnifying you for any action taken by you or on your behalf which occurs prior to the date hereof or subsequent to the Annual Meeting or such earlier time as you are no longer a nominee of the Slate for election to Forest Laboratories' Board of Directors or for any actions taken by you as a director of Forest Laboratories, if you are elected. Nothing herein shall be construed to provide you an indemnity: (i) in the event you are found to have engaged in a violation of any provision of state or federal law in connection with the Proxy Contest unless you demonstrate that your action was taken in good faith and in a manner you reasonably believed to be in or not opposed to the best

interests of electing the Slate; or (ii) if you acted in a manner which constitutes gross negligence or willful misconduct. In the event that you shall make any claim for indemnification hereunder, you shall promptly notify Icahn in the event of any third-party claims actually made against you or known by you to be threatened. In addition, with respect to any such claim, Icahn shall be entitled to control your defense with counsel chosen by Icahn. Icahn shall not be responsible for any settlement of any claim against you covered by this indemnity without its prior written consent. However, Icahn may not enter into any settlement of any such claim without your consent unless such settlement includes a release of you from any and all liability in respect of such claim. Each of us recognizes that should you be elected to the Board of Directors of Forest Laboratories all of your activities and decisions as a director will be governed by applicable law and subject to your fiduciary duty to the stockholders of Forest Laboratories and, as a result, that there is, and can be, no agreement between you and Icahn which governs the decisions which you will make as a director of Forest Laboratories. Should the foregoing agree with your understanding, please so indicate in the space provided below, whereupon this letter will become a binding agreement between us. Very truly yours,
ICAHN CAPITAL LP By: _____ Name: Edward E. Mattner Title: Authorized Signatory

Agreed to and Accepted as of the date first above written: _____ Name: EXHIBIT 3 HIGH RIVER LIMITED PARTNERSHIP ICAHN PARTNERS MASTER FUND LP ICAHN PARTNERS MASTER FUND II LP ICAHN PARTNERS MASTER FUND III LP ICAHN PARTNERS LP 767 FIFTH AVENUE, 47TH FLOOR NEW YORK, NY 10153 June 16, 2011 VIA FACSIMILE, EMAIL, BY HAND AND FEDERAL EXPRESS
----- Forest Laboratories, Inc. 909 Third Avenue New York, NY 10022 Attention:

Mr. Howard Solomon, Chairman and Chief Executive Officer Herschel S. Weinstein, Esquire, General Counsel and Corporate Secretary Re: Inspection of Books and Records ----- Gentlemen: High River Limited Partnership ("High River") is the record owner of 1000 shares of the common stock, ("Common Stock"), of Forest Laboratories, Inc., a Delaware corporation (the "Corporation"). High River, Icahn Partners LP, Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP and Icahn Partners Master Fund III LP, are collectively described herein as the "Icahn Parties." Including the 1000 record shares held by High River, the Icahn Parties collectively are the beneficial holders of approximately 19.9 million shares of Common Stock costing approximately \$317,000,000, which they believe represents approximately 6.95% of the outstanding Common Stock. The Icahn Parties have been stockholders of the Corporation for approximately two years. Attached hereto as Exhibit A are true and correct redacted copies of brokerage statements evidencing the beneficial ownership of Common Stock by Icahn Partners Master Fund LP, Icahn Partners Master Fund II LP, Icahn Partners Master Fund III LP and Icahn Partners LP. As common stockholders of the Corporation, the Icahn Parties hereby demand, pursuant to Section 220 of the General Corporation Law of the State of Delaware ("Section 220") and the common law of the State of Delaware, the right to inspect, no later than June 22, 2011, during normal business hours, the books and records of the Corporation requested herein, and to make copies or abstracts there from. I. Purpose. A. Factual Background. ----- In January 2004, the United States Department of Justice ("DOJ") and the United States Attorney's Office for the District of Massachusetts began an investigation into marketing, sales, and other activities allegedly undertaken by Forest Laboratories, Inc. (the "Company") in connection with Celexa, Lexapro, and a formulation of Levothroid that the Company ceased distributing in 2003. In September 2010, the Corporation announced that a subsidiary had pled guilty to federal felony and misdemeanor charges relating to this investigation. The announcement also revealed that the Corporation had paid various governmental entities in excess of \$300 million to settle related charges. Thereafter, the Corporation announced that it had settled derivative suits against its board of directors and certain of its officers, including Howard Solomon its CEO, stemming from the situation, and it appeared from the information disclosed to the shareholders that the Corporation had put this situation behind it. That, appearance, however, was false. In fact, despite the settlement and guilty plea something had caused the federal government to seek to change the Corporation's management. On April 13, 2011, the Company issued a press release, the material part of which stated as follows: NEW YORK, Apr 13, 2011 (BUSINESS WIRE) -- Forest Laboratories, Inc. (NYSE: FRX) today announced that Howard Solomon, Chairman, Chief Executive Officer and President, will challenge a potential action by the Office of the Inspector General, Department of Health and Human Services (HHS-OIG), to exclude him from participation in federal healthcare programs. Mr. Solomon was notified yesterday of the potential action in a letter from HHS-OIG. The potential action emanates from matters that were settled by Forest in 2010 with no finding of knowledge or wrongdoing by Mr. Solomon. The only basis given in the letter notifying Mr. Solomon of the potential action is that he is "associated with" Forest. The letter gives Mr. Solomon 30 days to respond and say why he should

not be excluded. Should HHS-OIG determine after that that Mr. Solomon be excluded, unless the effectiveness of such exclusion is enjoined by a court, Mr. Solomon would be required to step down from his present executive positions. Mr. Solomon plans to commence immediate litigation to prevent such exclusion from taking effect if HHS-OIG determines to proceed. Board member and Chairman of the Audit Committee William J. Candee III, speaking on behalf of Forest's entire Board of Directors stated, "It would be completely unwarranted to exclude a senior executive against whom there has never been any allegation of wrongdoing whatsoever. Mr. Solomon has always set a tone of the highest integrity from the top. At Mr. Solomon's direction, the Company has significantly enhanced its sales force monitoring and compliance procedures. We believe the potential HHS-OIG action may well be beyond its legal authority." Continued Mr. Candee, "At no time during the government's six year investigation of Forest was Mr. Solomon ever accused of any wrongdoing in connection with the matters settled in 2010. We are hopeful that HHS-OIG will decide that the facts and circumstances as to Mr. Solomon do not warrant an exercise of its exclusion authority." Herschel S. Weinstein, Vice President and General Counsel stated, "Numerous other major pharmaceutical companies have plead guilty to much more egregious offenses, and none of them has faced the exclusion of a senior executive who has not himself been convicted of a crime or pleaded guilty to a crime. We believe that HHS-OIG is contemplating using a statute that has never before been used under these circumstances and would be exceeding the bounds of its authority." Since the date that release was issued, the Corporation issued its Form 10-K for 2010. It expanded upon the statements of the press release: "Mr. Howard Solomon, our Chairman, Chief Executive Officer and President, has received a notice from the OIGHHS indicating its intent to consider excluding Mr. Solomon from participating in federal healthcare programs. This potential action by the OIGHHS emanates from matters that we settled in 2010 with no finding of knowledge or wrongdoing by Mr. Solomon. Mr. Solomon has until June 13, 2011 to respond to this notice explaining why he should not be so excluded. Should the OIGHHS determine after such response that Mr. Solomon should be excluded, Mr. Solomon would be required to step down from his present executive positions unless the effectiveness of such exclusion is enjoined by legal proceedings. Mr. Solomon plans to commence litigation to prevent such exclusion from taking effect if OIGHHS determines to proceed. We do not believe any such exclusion of Mr. Solomon is warranted and will support legal actions to challenge any such exclusion." The Corporation's disclosures make three points clear: (1) the federal government had brought criminal and civil charges against the Corporation for claimed misconduct, and those charges were settled in September 2010; (2) contrary to public statements made by the Corporation that settlement did not resolve all outstanding issues and the federal government has now for reasons not disclosed by the Corporation demanded Mr. Solomon, the Corporation's Chairman, CEO and President, step down from those roles or the Corporation will be barred from doing business with the United States Government; and (3) the Corporation's board of directors fully supports Mr. Solomon in his battle with the Government and has ordered the Corporation to back him in his fight. The board's support of Mr. Solomon comes despite declining performance of the Corporation over the past seven years. The price of the Common Stock peaked in February 2004 at almost \$76 per share. The current price is approximately \$38 per share, which means that shareholder value has been essentially cut in half during the last seven years. Analysts are predicting even further operational slippage as key drugs come off patent without immediate replacements. Earnings for the fiscal year ending March 31, 2011 were \$4.41 per share; the mean estimates for fiscal 2012 and 2013 are \$3.68 and \$1.21 per share respectively. Top line revenue is predicted to decline from \$4.42 billion to \$3.38 billion over the same period. From 2004 to the present a total of over \$10 billion in shareholder value has evaporated under the stewardship of Mr. Solomon and the board and corporate performance is still heading downhill. Although the stockholders have lost huge amounts of money, the board ensured that Mr. Solomon greatly prospered over the same period. According to the Corporation's disclosures, Mr. Solomon received almost \$50 million in total compensation from 2004-2010. And that number is conservative. In 2004-2005 the Company reported two possible values for options grants, and the \$50 million number uses the lower of the two values for those years. If the higher figures were used, the reported compensation amount would increase to almost \$70 million. In addition, while the shareholders were suffering from large stock declines, Mr. Solomon was selling. In February 2007 he sold 4.3 million shares at an average price of \$52.60 per share, for a total of approximately \$226 million, although the board has since issued Mr. Solomon significant amounts of new options and shares. In other words, Mr. Solomon cashed out much of his stake in the Company just as tough times were beginning, and his present holdings almost entirely consist of options or shares directly granted by the Corporation or that resulted from the exercise of options granted by the Corporation.

B. Mr. Solomon's Curious Board. ----- The Government's action against Mr. Solomon

is apparently unprecedented. It appears that never before has the Government insisted that a chief executive officer resign in order for a company to be allowed to continue to do business with the Government. It is difficult to understand why a board would richly reward a chief executive for the performance that Mr. Solomon has delivered over the past seven years. It is even more difficult to understand how any board of directors would risk a company to support a CEO with such a track record in a confrontation with the Government. The Corporation, however, does not have the type of board found at a typical public company. It currently has 9 directors, who-together with Mr. Solomon and the rest of executive management-collectively own only approximately 3% of the Corporation's stock, and most of that stock has been received in the forms of options or other stock grants. The directors have invested very little of their own cash in the Corporation. The following table lists the current directors, their positions with the Corporation, their ages and length of tenure on the board.

DIRECTOR	POSITION	WITH FOREST AGE	YEAR JOINED BOARD
Howard Solomon	Chairman and CEO	83	1964 (since 1977)
William J. Candee, III	Co-Chairman; Audit	84	1959
Comm. Chair George S. Cohan		87	1977
Dan L. Goldwasser		71	1977
Kenneth E. Goodman	Former President and COO	63	1998
Lester B. Salans, MD		75	1998
Lawrence S. Olanoff, MD	Just-Resigned President	59	2006
and COO Nesli Basgoz, MD		53	2006
Peter J. Zimetbaum, MD		47	2009

As can be seen, three of the Corporation's directors have served on the board with Mr. Solomon for over thirty years each, and all but one of the board members were directors during the past years in which shareholder value was vaporized and Mr. Solomon received large amounts of compensation. Overall, the average length of board service of the directors is almost 23 years. Given the directors' relatively small holdings of stock, extraordinary average length of tenure on the board and habit of rewarding Mr. Solomon while the stockholders suffered, the possibility obviously exists that many of the directors cannot view Mr. Solomon's performance objectively. Thus, it would be extremely difficult for them to not support Mr. Solomon in his fight with the Government even if that fight is not in the Corporation's or stockholders' best interests. Indeed, it is necessary to ask whether there has been a fundamental failure of board leadership and supervision as the directors have put their personal loyalty and friendship to Mr. Solomon above their fiduciary duties to the Corporation and its stockholders. If the Corporation's scant public disclosures are correct, the board has now irrevocably committed to supporting Mr. Solomon in his battle against the Government. Given that commitment, it is now up to the stockholders to decide if these are the best directors to be the stewards of Forest Laboratories' fate at this critical time. To make that decision, though, the stockholders need far more information about what is going on and why it is occurring than they have received. The Corporation's public disclosures about this affair have been opaque, inaccurate and seemingly designed to reveal the least possible information. The stockholders have not even been informed of the charges against Mr. Solomon. Thus, the stockholders have been denied even the most basic information necessary to determine whether the board is following a proper and appropriate course in its dealings with the Government or whether it is risking the Corporation to protect the CEO.

C. The Legal Standard and the Unanswered Questions. ----- Section 220 permits the stockholders of a corporation to investigate corporate mismanagement for the purposes of, among other things, "mounting a proxy fight to elect new directors;" "bring[ing] corporate misconduct to light;" or bringing litigation to redress wrongdoing, so long as there is a credible basis to believe such wrongdoing or mismanagement occurred. Here there is no doubt that there is a credible basis to believe that wrongdoing has occurred-a corporate subsidiary has pled guilty to a felony, the Corporation paid over \$300 million in fines and reimbursement and the Government is demanding that the Chairman and CEO be removed from his offices. The board's action in immediately supporting Mr. Solomon - despite his track record over the past seven years - also raises a credible basis to believe that it too engaged in mismanagement or wrongdoing as do the Corporation's obfuscating and misleading public statements about the situation. In deciding how the Corporation should be governed going forward the stockholders need answers to the following fundamental but unanswered questions. First, what has the Government told the Corporation about why it is seeking such an unprecedented remedy against Mr. Solomon and why did the September settlement not resolve all such matters? Second, why did the board immediately back Mr. Solomon? The press release that stated that the board was backing him was issued only one day after the Corporation purportedly was informed of the issue, which implies either that the Corporation was already aware of the possibility that the Government might take action against Mr. Solomon but did not disclose that to the stockholders or that the board acted with very little information and even less time to consider the import of what it was doing in publicly backing Mr. Solomon. Third, does the Corporation in fact have adequate grounds to contest the Government's actions here? Fourth, regardless of the background facts is it actually in the interest of the Corporation and all of its stockholders to

fight the Government under these circumstances? Is Mr. Solomon, whose last seven years of stewardship has resulted in a drop in shareholder value of 50%, really so critical to the success of the Corporation that it justifies the risks the board is taking? Finally, is this board so compromised or complicit with regard to Mr. Solomon that it has become potentially liable for its own violations of duty? D. Why the Icahn Parties Need to Review the Documents.

----- As long-term stockholders, the Icahn Parties believe that this is an intolerable situation that is patently unfair to the Corporation's stockholders. As the Corporation is aware, pursuant to the Corporation's by-laws the Icahn Parties have delivered the necessary papers to nominate alternative directors at the Corporation's annual meeting, which should be held in approximately August 2011. The purpose of this demand is: (1) to enable the Icahn Parties to review the information requested below and, if appropriate, to share it with their fellow stockholders in connection with the 2011 annual meeting of stockholders, and to use such information to support the election of directors nominated by the Icahn Parties in opposition to the Corporation's slate of directors; (2) to help the Icahn Parties determine which among the directors are the least independent and engaged so that the Icahn Parties might seek to replace those directors and retain the members of the board who are best suited to help manage the Corporation going forward; (3) to determine whether the board breached its duties to the Corporation and its stockholders when it determined to support Mr. Solomon in his personal fight with the Government; and (4) to determine whether litigation should be brought on behalf of the Corporation and/or its stockholders against Mr. Solomon and members of the board of directors. II. Documents Requested. The Icahn Parties therefore request the Corporation to produce to them the following documents: a) The HHS-OIG letter referred to in the press release quoted above that was delivered to the Corporation on or about April 12, 2011 and any other documents from HHS-OIG or counsel for the government in this matter dealing with Mr. Solomon, and any responses by Mr. Solomon or the Corporation thereto. b) Any document indicating that the Corporation was aware of the possibility that HHS-OIG (or other governmental agency) might seek such a, or similar, sanction against Mr. Solomon prior to April 12, 2011 (including any prior correspondence with HHS-OIG or its counsel relating to such subject). c) All documents provided to the board of directors or a committee thereof on this subject. d) All board or committee minutes in which this subject is discussed, including any minutes, resolutions or consents pursuant to which the board or any committee thereof concluded that it did not believe any such exclusion of Mr. Solomon [wa]s warranted and w[ould] support legal actions to challenge any such exclusion. The undersigned will bear the reasonable costs incurred by the Corporation in connection with the production of the above information. * * * The undersigned hereby authorizes Stephen Jenkins, Esq. and Richard D. Heins, Esq. of Ashby & Geddes, Wilmington, DE and their respective partners, associates, employees and any other persons designated by Stephen Jenkins or Richard D. Heins, acting together, singly or in combination, to conduct, as their agents, the inspection and copying requested herein and otherwise act on behalf of the undersigned pursuant to the attached power of attorney. Please advise the undersigned's counsel, Marc Weitzen, at (212) 702-4388, or Mark DiPaolo at (212) 702-4361 as promptly as practicable when and where the items demanded above will be made available to the undersigned. Please also advise Marc Weitzen or Mark DiPaolo immediately whether you voluntarily will supply the requested information. Very truly yours, HIGH RIVER LIMITED PARTNERSHIP By: Hopper Investments LLC, general partner By: /s/ Edward E. Mattner ----- Name: Edward E. Mattner Title: Authorized Signatory ICAHN PARTNERS MASTER FUND LP By: /s/ Edward E. Mattner ----- Name: Edward E. Mattner Title: Authorized Signatory ICAHN PARTNERS MASTER FUND II L.P. By: /s/ Edward E. Mattner ----- Name: Edward E. Mattner Title: Authorized Signatory ICAHN PARTNERS MASTER FUND III L.P. By: /s/ Edward E. Mattner ----- Name: Edward E. Mattner Title: Authorized Signatory ICAHN PARTNERS LP By: /s/ Edward E. Mattner ----- Name: Edward E. Mattner Title: Authorized Signatory SWORN TO AND SUBSCRIBED before me this 16th day of June 2011 /s/ Notary Public ----- Notary Public