MENTOR CORP /MN/
Form SC 14D9
December 12, 2008

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

SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(d)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934

MENTOR CORPORATION
(Name of Subject Company)

MENTOR CORPORATION
(Name of Person(s) Filing Statement)

Common Stock, par value $0.10 per share
(Title of Class of Securities)

587188103 (Common Stock)
(CUSIP Number of Class of Securities)

Joshua H. Levine
President and Chief Executive Officer
201 Mentor Drive
Santa Barbara, California 93111
(805) 879-6000
(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement).

With Copies to:

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201 Mentor Drive
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SIGNATURE
INFORMATION STATEMENT PURSUANT TO SECTION 14(f) OF THE SECURITIES EXCHANGE ACT OF 1934 AND RULE 14f-1 THEREUNDER
OFFEROR DESIGNEES
CERTAIN INFORMATION CONCERNING THE COMPANY
DIRECTORS AND EXECUTIVE OFFICERS OF THE COMPANY
CORPORATE GOVERNANCE PRINCIPLES AND BOARD MATTERS
EXECUTIVE COMPENSATION
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Item 1. ***Subject Company Information.***

(a) The name of the subject company is Mentor Corporation, a Minnesota corporation (the *Company*). The address of the principal executive offices of the Company is 201 Mentor Drive, Santa Barbara, California 93111. The telephone number of the principal executive offices of the Company is (805) 879-6000.

(b) The title of the class of equity securities to which this statement relates is the Company s common stock, par value $0.10 per share (the *Common Stock* or the *Shares*). As of the close of business on December 3, 2008, there were 33,770,050 shares of Common Stock outstanding.

Item 2. ***Identity and Background of Filing Person.***

(a) *Name and Address.* The name, business address and business telephone number of the Company, which is the person filing this Schedule 14D-9, are set forth in Item 1(a) above.

(b) *Tender Offer.* This statement relates to a tender offer by Maple Merger Sub, Inc., a Minnesota corporation (*Offeror*), and a wholly owned subsidiary of Johnson & Johnson, a New Jersey corporation (*Parent* or *Johnson & Johnson*), disclosed in a Tender Offer Statement on Schedule TO, dated December 12, 2008 (as amended or supplemented from time to time, the *Schedule TO*) filed with the Securities and Exchange Commission (the *SEC*), to purchase all of the issued and outstanding shares of Common Stock, at a purchase price of $31.00 per share (such amount, or any other amount per Share paid pursuant to such tender offer, the *Offer Price*), net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated December 12, 2008 (as amended or supplemented from time to time, the *Offer to Purchase*), and in the related Letter of Transmittal (as amended or supplemented from time to time, the *Letter of Transmittal*) (which, together with the Offer to Purchase, constitute the *Offer*). The Offer to Purchase and Letter of Transmittal are being mailed with this statement, are filed as Exhibits (a)(1)(A) and (a)(1)(B) hereto, respectively, and are incorporated herein by reference.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of December 1, 2008, by and among Parent, Offeror and the Company (as such agreement may be amended or supplemented from time to time, the *Merger Agreement*). The Merger Agreement provides, among other things, that following the consummation of the Offer and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement and in accordance with the relevant portions of the Minnesota Business Corporation Act (the *MBCA*), Offeror will merge with and into the Company (the *Merger*). At the effective time of the Merger pursuant to the Merger Agreement (the *Effective Time*), each share of Common Stock that is not tendered pursuant to the Offer will be converted into the right to receive net in cash, without interest and less any required withholding taxes, an amount equal to the Offer Price (the *Merger Consideration*) (other than shares of Common Stock that are owned by (i) Offeror, Parent or the Company, which will be cancelled, and (ii) shareholders, if any, who properly exercise their dissenters rights under the MBCA). Following the Effective Time, the separate corporate existence of Offeror will cease, and the Company will continue as a wholly owned subsidiary of Parent (the Company after the Effective Time hereinafter referred to as the *Surviving Corporation*). A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference.

As set forth in the Schedule TO, the address of the principal executive offices of Parent and Offeror is One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933, and the telephone number of the principal executive offices of Parent and Offeror is (732) 524-0400.

Item 3. ***Past Contacts, Transactions, Negotiations and Agreements.***

Except as set forth in this Item 3, or in the Information Statement of the Company attached to this Schedule 14D-9 as Annex I (the *Information Statement*) or as incorporated by reference herein, as of the date hereof, there are no material agreements, arrangements or understandings or any actual or potential conflicts of interest between the Company or its affiliates and (i) its executive officers, directors or affiliates or (ii) Parent, Offeror or their respective executive officers, directors or affiliates. The Information Statement is being furnished to the Company s shareholders pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended (the *Exchange Act*), and Rule 14f-1 promulgated under the Exchange Act in connection with Parent s right, pursuant to the Merger Agreement and after acceptance of the Shares in the Offer for payment, to designate persons to the

board of directors of the Company (the *Board*) other than at a meeting of the shareholders of the Company. The Information Statement is incorporated herein by reference.

(a) Arrangements with Current Executive Officers, Directors and Affiliates of the Company.

Certain agreements, arrangements or understandings between the Company or its affiliates and certain of its executive officers, directors and affiliates are described in the Information Statement.

Interests of Certain Persons.

Certain directors and executive officers of the Company may be deemed to have interests in the transactions contemplated by the Merger Agreement that are different from or in addition to their interests as Company shareholders generally. The Board was aware of these interests and considered them, among other matters, in approving the Merger Agreement and the transactions contemplated thereby.

As described below, consummation of the Offer will constitute a change in control of the Company for the purposes of determining the entitlements due to certain directors and executive officers of the Company under certain severance and other benefits agreements or arrangements.

Cash Consideration Payable Pursuant to the Offer.

If each of the directors and executive officers of the Company were to tender the Shares each owns for purchase pursuant to the Offer, each would receive the same per Share cash consideration on the same terms and conditions as the other shareholders of the Company. Any outstanding shares of Common Stock owned by such directors and executive officers and not tendered in the Offer will be cancelled and converted at the Effective Time into the right to receive the Offer Price, without interest.

As of December 3, 2008, the Company s directors and executive officers owned in the aggregate 203,838 shares of Common Stock (excluding restricted shares, performance stock units and shares issuable upon the exercise of options to purchase Common Stock). If the Company s directors and executive officers were to tender all of their shares of Common Stock for purchase pursuant to the Offer, and such shares of Common Stock were purchased by Offeror at the Offer Price, the directors and executive officers would receive an aggregate amount of $6,318,981 net in cash, without interest and less any required withholding taxes.

Treatment of Options held by Executive Officers, Directors and Affiliates.

Pursuant to the Merger Agreement, each option to purchase shares of Common Stock, whether under any of the Company s stock option plans or pursuant to individual award agreements (each, a *Company Stock Option*), will become fully exercisable and may be exercised before the Effective Time at such applicable time or times as specified in the Company s stock plans. Each Company Stock Option outstanding immediately prior to the Effective Time (whether or not vested) will be cancelled at the Effective Time and each holder will be entitled to receive, in full satisfaction of such Company Stock Option, a single lump sum cash payment equal to the product of (i) the number of shares of Common Stock for which such Company Stock Option shall not theretofore have been exercised and (ii) the excess, if any, of the Merger Consideration over the exercise price per share of such Company Stock Option.

As of December 3, 2008, the Company s directors and executive officers held Company Stock Options to purchase in the aggregate 1,625,000 shares of Common Stock with an approximate aggregate dollar value equal to $2,873,172 (based on the excess, if any, of the Offer Price over the exercise price per share of Common Stock subject to such Company Stock Options) net in cash, without interest and less any required withholding taxes.

Treatment of Restricted Stock held by Executive Officers, Directors and Affiliates.

Pursuant to the Merger Agreement, each share of Common Stock that is subject to vesting or other forfeiture restrictions or subject to a right of repurchase by the Company at a fixed purchase price (shares so subject, the *Company Restricted Shares*) that is outstanding immediately prior to the Effective Time will vest in full and be converted into the right to receive the Merger Consideration.

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As of December 3, 2008, the Company s directors and executive officers owned in the aggregate 120,729 Company Restricted Shares. If all of the Company Restricted Shares owned by the directors and executive officers were converted pursuant to the Merger Agreement, the directors and executive officers would receive an aggregate amount of $3,742,599 net in cash, without interest and less any required withholding taxes.

Treatment of Performance Stock Units held by Executive Officers, Directors and Affiliates.

Pursuant to the Merger Agreement, the terms of each outstanding performance stock unit award in respect of shares of Common Stock (collectively, the *Company PSU Awards*) will be adjusted as necessary to provide that (a) the applicable performance period shall terminate immediately prior to the Effective Time, and the greater of (i) 100% of the stock units subject to such Company PSU Award and (ii) the applicable percentage of stock units subject to such Company PSU Award determined in accordance with the vesting schedule set forth in the applicable award agreement based on the performance of the Common Stock for the shortened performance period relative to the performance of the Russell 2500 Growth Index for the same performance period, shall vest in full; (b) each such stock unit that so vests shall be converted into the right to receive the sum of (i) the Merger Consideration and (ii) a cash amount equal to the aggregate per-share amount of any ordinary cash dividends paid by the Company on the Common Stock during the shortened performance period; and (c) any stock units subject to such Company PSU Award that do not vest pursuant to the above shall terminate as of the Effective Time.

As of December 3, 2008, the Company s directors and executive officers owned in the aggregate Company PSU Awards representing up to a maximum of 140,000 Shares. The Company expects that upon the closing of the Merger, these Company PSU Awards will be converted pursuant to the Merger Agreement, and that the directors and executive officers will receive in respect of these Company PSU Awards an aggregate amount of $4,340,000 net in cash, without interest and less any required withholding taxes.

Director and Officer Indemnification and Insurance.

Section 302A.521, subd. 2, of the MBCA requires the Company to indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person with respect to the Company 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 the person in connection with such proceeding if such person (i) has not been indemnified by another organization or employee benefit plan for the same judgments, penalties or fines; (ii) acted in good faith; (iii) received no improper personal benefit, and statutory procedure has been followed in the case of any conflict of interest by a director; (iv) in the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and (v) in the case of acts or omissions occurring in the person s performance in the official capacity of director or, for a person not a director, in the official capacity of officer, board committee member or employee, reasonably believed that the conduct was in the best interests of the Company, or, in the case of performance by a director, officer or employee of the Company involving service as a director, officer, partner, trustee, employee or agent of another organization or employee benefit plan, reasonably believed that the conduct was not opposed to the best interests of the Company. In addition, Section 302A.521, subd. 3, requires payment by the Company, upon written request, of reasonable expenses in advance of final disposition of the proceeding in certain instances. A decision as to required indemnification is made by a disinterested majority of the Board present at a meeting at which a disinterested quorum is present, or by a designated committee of the Board, by special legal counsel, by the shareholders, or by a court.

Section 4.01 of the Amended and Restated Bylaws of the Company (the *Bylaws*) provides that the Company shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances and to such extent, as required or permitted by MBCA, Section 302A.521, as amended from time to time, or as required or permitted by provisions of law; provided, however, that the Company shall not make advances to any person other

than a director of the Company or of another corporation at least 80% of the shares of common stock of all classes of which are owned directly or indirectly by the Company (a *Subsidiary*) or an officer of the Company or of a Subsidiary who is elected by the directors of the Company or Subsidiary; and provided, further, that the Company shall not indemnify any person, other than a director of the Company or of a Subsidiary, or an officer of the Company or of a Subsidiary, who is elected by the directors, in respect of any judgment, penalty, fine, excise tax,

settlement, expense or other matter for which such person shall have been finally determined to be liable by reason of his or her negligence, recklessness or willful misconduct.

As permitted by the Minnesota Statutes, Article IX of the Company s Composite Restated Articles of Incorporation, as amended (the *Articles*), provides that a director of the Company shall not be personally liable for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director s duty of loyalty to the Company or its shareholders; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) under Section 302A.559 of the MBCA; (iv) for any transaction from which the director derived any improper personal benefit; or (v) for any act or omission occurring prior to the effective date of Article IX.

The Company has also entered into indemnification agreements with its directors and officers containing provisions that may require the Company, among other things, to indemnify such directors and officers against certain liabilities that may arise by reason of their status or service as directors, to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified, and to extend directors and officers insurance coverage to such officers and directors to the extent the Company maintains a directors and officers insurance policy or policies. The description of the indemnification agreements entered into with the Company s directors and certain former officers is qualified in its entirety by reference to the form of the indemnification agreement filed as Exhibit (e)(2) which is incorporated herein by reference.

Pursuant to the Merger Agreement, Parent has agreed to cause the Surviving Corporation to assume the obligations with respect to all rights to indemnification, advancement of expenses and exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time now existing in favor of the current or former directors and officers of the Company (the *Indemnified Persons*), as provided in the Articles, the Bylaws or any indemnification agreement between the Company and such directors or officers (in each case, as in effect on the date of the Merger Agreement or as amended or entered into prior to the Closing (as such term is defined in the Merger Agreement) with the consent of Parent). In addition, the Merger Agreement further provides that in the event that the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers or conveys a material portion of its properties and other assets to any person, then, and in each such case, Parent shall cause proper provision to be made so that the successors and assigns of the Surviving Corporation expressly assume such obligations or Parent shall take such other action to ensure that the ability of the Surviving Corporation, legal and financial, to satisfy such obligations will not be diminished.

The Merger Agreement further provides that Parent will obtain, at the Effective Time, a prepaid tail officers and directors liability insurance policy in respect of acts or omissions occurring at or prior to the Effective Time for six years from the Effective Time, covering each person covered by the Company s directors and officers insurance policy on the date of the Merger Agreement on terms with respect to coverage and amounts no less favorable than those of such policy in effect on the date of the Merger Agreement; provided that Parent shall not be obligated to pay more than $1,400,000 in the aggregate to obtain such coverage. In addition, in the event such coverage cannot be obtained for $1,400,000 or less in the aggregate, Parent shall be obligated to obtain, effective from the Effective Time and for six years thereafter, a prepaid policy providing the maximum coverage as may be obtained for such $1,400,000 aggregate amount.

Employment and Change of Control Arrangements with the Company.

Employment Agreement with Joshua Levine.

On August 25, 2005, the Company entered into an employment agreement with Mr. Levine, the Company s President and Chief Executive Officer, which was amended and restated as of December 21, 2007. Under this agreement, Mr. Levine would be entitled to receive the following severance benefits if his employment is terminated within twelve months following a change of control of the Company following execution of a general release of claims: (i) payment of an amount equal to 36 months of his base salary in effect at the time of termination; (ii) payment of an amount equal to the full annual incentive bonus for which he is eligible, calculated based upon the bonus period in which the termination occurs; (iii) payment of full COBRA premiums for 24 months following termination or until Mr. Levine elects alternative coverage; and (iv) full vesting of all unvested stock options granted

by the Company to Mr. Levine prior to the change of control. The consummation of the Offer would constitute a change of control under such employment agreement.

In addition, if Mr. Levine were to terminate his employment for Good Reason (as described below), whether or not in connection with a change of control, he would be entitled to receive the following severance benefits following execution of a general release of claims: (i) payment of an amount equal to 36 months of his base salary in effect at the time of termination; (ii) payment of a pro-rated amount of his eligible cash incentive bonus percentage of base salary; and (iii) payment of full COBRA premiums for 24 months following termination or until Mr. Levine elects alternative coverage.

The foregoing description of the employment agreement with Mr. Levine does not purport to be complete and is qualified in its entirety by reference to the same agreement filed as Exhibit (e)(3), which is incorporated herein by reference. Further, the terms of such employment agreement have been modified by the retention agreement (as described below) by and among Mr. Levine, Parent and the Company.

Employment Agreements with Other Current Executive Officers.

The Company has entered into employment agreements with each of Michael O Neill, Chief Financial Officer of the Company, Edward S. Northup, Chief Operating Officer of the Company and Joseph A. Newcomb, General Counsel and Secretary of the Company. These agreements all provide that if the executive officer is terminated within twelve months following a change of control of the Company, the executive officer would be entitled to receive the following severance benefits following execution of a general release of claims: (i) payment of an amount equal to 24 months of the executive officer s base salary in effect at the time of termination; (ii) payment of an amount equal to the full annual incentive bonus for which the executive officer is eligible, calculated based upon the bonus period in which the termination occurs; (iii) payment of full COBRA premiums for 24 months following termination or until the executive officer elects alternative coverage; and (iv) full vesting of all unvested stock options granted by the Company to the executive officer prior to the change of control. The consummation of the Offer would constitute a change of control under each of the employment agreements described above.

In addition, if each of Mr. O Neill, Mr. Northup and Mr. Newcomb were to terminate his employment for Good Reason (as described below), whether or not in connection with a change of control, he would be entitled to receive the following severance benefits following execution of a general release of claims: (i) payment of an amount equal to 24 months of his base salary in effect at the time of termination; (ii) payment of a pro-rated amount of his eligible cash incentive bonus percentage of base salary; and (iii) payment of full COBRA premiums for 24 months following termination or until the executive officer elects alternative coverage.

Under the terms of each of the employment agreements, including Mr. Levine s employment agreement, Good Reason means the occurrence of any of the following without the executive officer s written consent: (i) a significant reduction of material duties, position or responsibilities or removal from the executive officers position; (ii) a material reduction in base compensation or bonus other than a one-time reduction of not more than 10% that is applied to substantially all other senior executives; (iii) the executive officer must perform a significant portion of duties in a location more than 50 miles from the Company s headquarters; or (iv) relocation of the Company s headquarters to a location more than 50 miles from the Company s current location in Santa Barbara, California.

The foregoing description of the employment agreements with Mr. O Neill, Mr. Northup and Mr. Newcomb does not purport to be complete and is qualified in its entirety by reference to such agreements filed as Exhibit (e)(4), Exhibit (e)(5) and Exhibit (e)(6), respectively, each of which is incorporated herein by reference. Further, the terms of the employment agreements with Mr. Newcomb and Mr. Northup have been modified by the respective retention agreements (as described below) by and among the respective executive officer, Parent and the Company.

Executive Officer Retention Arrangements with Parent.

On November 30, 2008, each of Joshua H. Levine, Joseph A. Newcomb and Edward S. Northup entered into a retention letter agreement with Parent and the Company to continue his employment with the Company following the closing of the Merger. The retention agreements modify the executive officer s rights and obligations under the executive s employment agreement. Under each retention agreement, in exchange for the respective executive

limiting his right under his existing employment agreement to terminate his employment for Good Reason following the closing of the Merger, he is entitled to the payment of a retention bonus in the form of a lump-sum amount equal to 36 months base salary in the case of Mr. Levine and 24 months base salary in the case of each of Mr. Newcomb and Mr. Northup. The executive officer must remain an active, full-time employee of the Company or Parent or any of their respective subsidiaries for a period of 12 months following the closing of the Merger in order to be eligible to receive the retention bonus. In addition, each executive officer is entitled to severance payments under the applicable employment agreement described above (other than the vesting of stock options or other equity-based or equity-related awards granted on or after the closing of the Merger) only in the event he is terminated within 12 months after the closing of the Merger for reasons other than (i) by the Company for Cause (as defined in each retention agreement and described below), (ii) by the Employee other than for Good Reason or (iii) due to the executive officer s death or disability.

The retention agreements amend the definition of Good Reason in the employment agreements such that Good Reason means the occurrence of any of the following without the respective executive s express written consent: (i) following a change of control, the Company assigning the executive duties or responsibilities that are substantially inconsistent with his professional skills and experience levels as of such change of control (without regard to the fact that the Company is no longer an independent publicly held company); (ii) a material reduction in base compensation other than a one-time reduction of not more than 10% that also is applied to substantially all other senior executives at the Company; or (iii) the executive officer must perform a significant portion of duties in a location more than 50 miles from the Company s headquarters.

In addition, among other things, the retention agreements amend the definition of Cause to mean: (i) engaging in any material criminal activity or willful neglect of any material duty owed to the Company; (ii) material breach of a fiduciary duty owed to the Company or any material obligation of the executive under his employment agreement, as amended by the retention agreement; or (iii) conduct that threatens to do immediate and substantial harm to the Company s business or reputation.

The foregoing description of the retention agreements does not purport to be complete and is qualified in its entirety by reference to the form of retention agreement, which is filed as Exhibit (e)(7) and is incorporated herein by reference.

(b) Arrangements with Offeror and Parent.

Merger Agreement.

The summary of the Merger Agreement contained in Section 11 of the Offer to Purchase and the description of the conditions of the Offer contained in Section 15 of the Offer to Purchase are incorporated herein by reference. This summary is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) and is incorporated herein by reference.

Effects of the Merger Agreement on Dividend Policy

The Merger Agreement provides that, from the date of the Merger Agreement to the Effective Time, the Company shall not declare or pay any dividends on the Common Stock. Neither Parent nor Offeror anticipate waiving this restriction or otherwise consenting to the payment of any dividend on the Common Stock. Accordingly, it is anticipated that no dividends will be declared or paid on the Shares following December 1, 2008. The Company has previously periodically declared and paid cash dividends on the Common Stock. The following table sets forth, for the historical periods indicated, the quarterly cash dividends declared and paid per Share:

	Quarterly Cash Dividends Declared and Paid Fiscal Year Ended March 31,		
	2009	**2008**	**2007**
First Quarter	**$ 0.20**	$ 0.20	$ 0.18
Second Quarter	**0.20**	0.20	0.18
Third Quarter	**N/A**	0.20	0.18
Fourth Quarter	**N/A**	0.20	0.20
Total	**$ 0.40**	$ 0.80	$ 0.74

Effects of the Merger Agreement on Indebtedness

The Merger Agreement provides that the Company shall use its commercially reasonable efforts to facilitate repayment of all amounts owing under the Company s credit agreement dated as of May 25, 2005 with Bank of the West, Union Bank of California, N.A. and Wells Fargo, National Association, as amended (the *Credit Agreement*) and that certain credit agreement dated as of October 4, 2005, between the Company and Cooperative RaboBank Leiden, Leiderdorp en Oestgstgeest U.A.

Effects of the Merger Agreement on the Notes

The Merger Agreement provides that the Company shall, pursuant to and in accordance with the terms of the indenture governing the Company s outstanding 2.75% Convertible Subordinated Notes due 2024 (the *Notes*), take all actions necessary to redeem all outstanding Notes with a redemption date of January 1, 2009, at a price not to exceed the redemption price as calculated pursuant to such indenture plus all accrued and unpaid interest thereon, and take all other actions as may be necessary to satisfy and discharge such indenture.

Item 4. *The Solicitation or Recommendation.*

(a) Recommendation.

At a meeting held on November 29, 2008, the Board unanimously (i) approved and declared advisable the Merger Agreement, the Offer, the Merger and the other transactions contemplated by the Merger Agreement, (ii) declared that it is in the best interests of the shareholders of the Company that the Company enter into the Merger Agreement and consummate the transactions contemplated by the Merger Agreement on the terms and subject to the conditions set forth therein, (iii) declared that the terms of the Offer and the Merger are fair to the Company and the shareholders of the Company and (iv) recommended that the shareholders of the Company accept the Offer, tender their Shares pursuant to the Offer and, if required by applicable law, approve and adopt the Merger Agreement.

(b) Background and Reasons for the Recommendation.

Background of the Offer and the Merger.

The Company has periodically reviewed and assessed trends and conditions impacting the Company and the medical aesthetics market generally, and from time to time the Board has reviewed the strategic options potentially available to the Company, including growth through product investments and targeted acquisitions of other businesses. The Company also has considered the possibility of various strategic combination transactions and commercial arrangements.

In 2004, the Company engaged a financial advisor to assist the Board as it explored strategic options, including a possible sale of the Company. Under the direction of the Board, the financial advisor contacted multiple potential strategic and financial buyers in 2004 and 2005 about purchasing the Company. This process did not generate any offers or other expressions of interest with respect to a purchase of the Company. Following this assessment of strategic alternatives, the Company adopted a business plan and strategy of focusing on the medical aesthetics market. In executing this strategy the Company planned to rely on its surgical breast implant business and use the operating income generated by that business to invest in the development of additional products for the medical aesthetic market. As part of this strategy, the Company sold its surgical urology and clinical consumer healthcare businesses in June 2006.

In the summer of 2006, Ethicon, Inc., a wholly owned subsidiary of Johnson & Johnson *(Ethicon)*, initiated discussions with the Company concerning the possibility of engaging in certain marketing collaborations and other related commercial arrangements. In connection with and in furtherance of these discussions, on August 4, 2006, Ethicon and the Company executed a confidentiality agreement to enable the exchange of certain non-public information between the two entities. In the summer and early fall of 2006, senior executives of the Company and Johnson & Johnson discussed potential marketing collaborations and shared their respective views on the medical aesthetics industry. However, these discussions ceased in September 2006 before any agreement or arrangement was reached. The possibility of a sale of the Company to Ethicon or Johnson & Johnson was not discussed during the course of these conversations.

In June 2007, Ethicon approached the Company to discuss the possibility of a strategic transaction involving the Company and Ethicon and to gauge the Company s interest in discussions concerning the possible sale of the Company to Ethicon. Ethicon informed the Company that its interest in a potential acquisition would be subject to receiving access to various non-public information and the completion of a comprehensive due diligence investigation of the Company. In connection with and to further facilitate these discussions, the Company and Ethicon executed a nondisclosure agreement (the *Confidentiality Agreement*) on June 14, 2007, to facilitate the Company providing Johnson & Johnson with access to non-public information concerning the Company.

From July 2007 to April 2008, the Company and Ethicon engaged in periodic communications in an effort to establish a framework for discussions concerning a potential strategic transaction, but no substantive discussions occurred and no information was exchanged. However, in May 2008, William C. Weldon, Johnson & Johnson s Chairman and Chief Executive Officer, and Sherilyn McCoy, Johnson & Johnson s Worldwide Chairman, Surgical Care Group, had dinner with Joseph E. Whitters, the Company s Chairman of the Board of Directors, and Joshua H. Levine, the Company s President and Chief Executive Officer and a member of the Board. Messrs. Weldon, Whitters and Levine and Ms. McCoy discussed the medical aesthetics industry, including U.S. and global market trends and conditions and the industry s competitive landscape, and discussed whether there was any possibility of a strategic opportunity involving the Company and Ethicon. On May 7, 2008, in connection with ongoing discussions between the Company and Ethicon, the Confidentiality Agreement was amended to extend its term.

During the week of August 4, 2008, Johnson & Johnson requested, and the Company provided, certain business and financial information concerning the Company, including a summary five-year financial forecast and a strategic plan. The Company and Johnson & Johnson also arranged a meeting between Messrs. Whitters, Levine and Weldon and Ms. McCoy for August 18, 2008 in Santa Barbara, California.

During the August 18, 2008 meeting, Messrs. Whitters and Levine shared additional financial and business information with Johnson & Johnson. During the meeting, Mr. Weldon reiterated that Johnson & Johnson was interested in engaging in discussions and due diligence with respect to a potential acquisition of the Company. Mr. Weldon further stated that Johnson & Johnson s preliminary view with regard to value suggested that Johnson & Johnson could be willing to pay as much as $1.2 billion to $1.5 billion for the Company in an all-cash transaction not subject to any financing condition. The Company calculated that such valuation would provide the shareholders with a 30-60% premium to the then 30-day trading average for the shares. However, Mr. Weldon emphasized that Johnson & Johnson s interest in any potential transaction was subject to the outcome of a comprehensive due diligence investigation of the Company. Ms. McCoy indicated that Johnson & Johnson wished to begin this due diligence investigation during the first week of September 2008.

On the afternoon of August 18, 2008, the Board held a telephonic meeting. Members of the Company s management and representatives of Morrison & Foerster LLP *(Morrison)*, the Company s outside legal counsel, attended the meeting. At the meeting, Messrs. Whitters and Levine presented the Board with an overview of that day s meeting with Johnson & Johnson, including Johnson & Johnson s indication of interest in purchasing the Company. The Board discussed how to respond to the indication in light of the fact that, at that time, no decision had been made to sell the Company. The Board determined to retain Citigroup Global Markets Inc. *(Citi)* to act as the Company s financial advisor and to retain Morrison to act as the Company s legal advisor in considering Johnson & Johnson s indication of interest. The Board also decided to reconvene on August 20, 2008 to further discuss the appropriate response to Johnson & Johnson s communications.

On August 20, 2008, the Board again met telephonically, together with members of the Company s management and legal and financial advisors. The Board discussed with the Company s management and advisors potential next steps with respect to a response to Johnson & Johnson s proposal and scheduled a meeting on August 27, 2008 to further discuss the proposal.

On August 27, 2008, the Board met at the Morrison offices in San Francisco, California. Members of the Company s management, as well as representatives of the Company s legal and financial advisors, were present at the meeting. The Company s legal advisor gave a presentation to the directors regarding their fiduciary duties to shareholders with respect to a potential change of control transaction. The Company s financial advisor reviewed with the Board, among other things, the Company s historical stock price performance, analyst stock price targets for the Company and a brief overview of certain of the Company s products. The Company s financial advisor also

provided the Board with an overview of Johnson & Johnson, including highlights from certain historical Johnson & Johnson transactions, and certain preliminary transaction considerations, including potential sale process alternatives, various factors that might be considered by a strategic or financial buyer and structuring options and possible timeline for a transaction. The Company s financial advisor also preliminarily discussed with the Board certain financial matters pertaining to the Company based upon information provided by the Company s management.

The Board and the Company s management and advisors discussed the possibility of a financial or strategic buyer acquiring the Company, and the view that there would likely be a limited number of interested parties given the complexity of the Company s business, which is composed of three unique and distinct existing and potential product lines. The Board observed that the state of the credit markets at that time generated significant risks with respect to the ability of a potential financial buyer to obtain financing for, and to successfully consummate, any proposed transaction and, based on the foregoing, concluded that it was unlikely that a financial buyer would be able to match or exceed the valuation of the Company or provide the certainty offered by a strategic buyer. The Board also discussed with the Company s management and financial advisor certain strategic companies that might have the capability and interest in acquiring a portion of the Company and the limited number of potential strategic buyers that might have the capability and interest in acquiring the entire Company. The Board considered, with input from the other participants in the meeting, the advisability of reviewing strategic alternatives potentially available to the Company, including entering into a sale process with one or more potential buyers, including Johnson & Johnson, remaining an independent company, and pursuing other means of monetizing the Company s non-surgical businesses. The Board also considered the unsuccessful efforts to sell the Company in 2004 and 2005, which was a significantly more robust financial market and a significantly stronger economic environment. After lengthy discussion, the Board determined that a review of the prospects of the Company on a stand alone basis, as well as a review of other strategic alternatives, was important to enable the Board to formulate a view regarding the opportunity presented by Johnson & Johnson, and authorized and directed that the following actions be taken: (1) Mr. Levine, working with Mr. Whitters, was to communicate to Johnson & Johnson that no decision had been made to sell the Company, but that Johnson & Johnson would be allowed to conduct a due diligence investigation of the Company so that Johnson & Johnson could assess its interest in and valuation of the Company, (2) management, with the assistance of the Company s financial advisor, was to conduct a review of strategic alternatives potentially available to the Company, and (3) an ad hoc committee of independent directors would be formed to oversee an analysis by management to assess the value of the Company s intellectual property portfolio and evaluate other strategic alternatives for the portfolio. Katherine S. Napier, Burt E. Rosen and Margaret H. Jordan were designated as members of the ad hoc committee, with Ms. Napier designated as the chair.

Following the August 27, 2008 Board meeting, Mr. Levine telephoned Ms. McCoy and conveyed the Board s decision to allow Johnson & Johnson to begin its due diligence investigation of the Company. Mr. Levine also emphasized to Ms. McCoy that, at that time, no decision had been made to sell the Company.

On August 28, 2008, representatives of Johnson & Johnson sent an initial due diligence request to Mr. Levine, and the Company began preparing a virtual data room that contained information and documentation requested by Johnson & Johnson. In connection with the ongoing due diligence review, Ethicon and the Company further amended the Confidentiality Agreement on September 4, 2008 to again extend its term. On September 9, 2008, representatives and advisors of Johnson & Johnson were given access to the virtual data room. Through November 4, 2008, representatives and advisors of Johnson & Johnson reviewed the information and documentation contained in the data room, and the Company s management conducted numerous in person and telephonic meetings with representatives of Johnson & Johnson in connection with Johnson & Johnson s due diligence review of the Company. During that time, Johnson & Johnson representatives also visited several of the Company s facilities.

Between August 27, 2008 and September 15, 2008, the ad hoc committee of independent directors participated in several discussions with management and the Company s financial advisor regarding the scope and strength of the

Company s intellectual property portfolio.

The Board held its annual meeting on September 15, 2008 in Irving, Texas. Members of the Company s management and representatives of the Company s legal and financial advisors attended a portion of the meeting. At this meeting, the Board received an update as to Johnson & Johnson s ongoing due diligence investigation of the

Company. Pursuant to the Board s prior instructions, management, with the assistance of the Company s financial advisor, discussed with the Board potential structural alternatives to enhance shareholder value, including separating the Company s toxin and dermal filler businesses and other potential means of monetizing those assets. After a lengthy discussion, the Board concluded that such structural alternatives were not viable at that time for, among others, financial and operational reasons. The Board was also updated on management s forecast for the 2009 fiscal year, and management indicated to the Board that it was monitoring a decline in surgical breast implant procedural volume that had resulted in an unexpected drop in sales for August 2008.

On September 18, 2008, senior management of the Company, together with the Company s financial advisor, met in Los Angeles, California with Ms. McCoy, Alex Gorsky, Company Group Chairman and worldwide Franchise Chairman of Ethicon, Gary J. Pruden, Worldwide President of Ethicon, and other representatives of Johnson & Johnson. The Company s management shared additional business and financial information, including portions of the Company s updated strategic plan, with the representatives of Johnson & Johnson. The Company also provided Johnson & Johnson with a preliminary summary of its expected financial results for the fiscal year ending March 31, 2009, which reflected a downward adjustment to the Company s previous sales projections.

Following the September 18, 2008 meeting, in accordance with the Board s directives, the Company s financial advisor had frequent discussions with representatives of Johnson & Johnson about Johnson & Johnson s interest in acquiring the Company.

On September 22, 2008, the Board met telephonically, together with members of the Company s management and representatives of the Company s financial advisor. Messrs. Levine and Whitters updated the Board on the September 18, 2008 meeting, as well as on Johnson & Johnson s continuing due diligence investigation of the Company.

From mid-September 2008 to mid-October 2008, the global financial markets experienced significant volatility and an overall substantial decline in value, and the Company s stock price declined from a high of more than $28 per Share to less than $17 per Share. Further, the Company continued to experience a decline in product demand resulting from a continuing decrease in elective surgical procedure volume, and the Company s management evaluated its forecast for the 2009 fiscal year and strategic plan and determined that further downward adjustments to the fiscal year 2009 forecast and strategic plan were warranted based on these developments.

On October 3, 2008, Ms. McCoy indicated to Mr. Levine that, based upon the due diligence review Johnson & Johnson had conducted to date, Johnson & Johnson valued the Company in a range of between $1.3 billion and $1.5 billion. The Company determined that such valuation represented a per Share price of approximately $36 to $41. On October 5, 2008, the Board held a telephonic meeting at which members of the Company s management and representatives of the Company s legal and financial advisors were present. The Board was given an update on the discussions that had occurred with Johnson & Johnson since the September 22, 2008 Board meeting, including the indication of valuation that Johnson & Johnson had communicated on October 3, 2008. The Board discussed the indication and directed the Company s management and financial advisor to convey to Johnson & Johnson that it would need to narrow its value range before the Board would further consider Johnson & Johnson s indication of interest. Following the Board meeting, representatives of the Company s financial advisor called representatives of Johnson & Johnson and conveyed the Board s decision. On October 6, 2008, representatives of Johnson & Johnson indicated to representatives of the Company s financial advisor that Johnson & Johnson had refined its valuation of the Company to a range of between $1.37 billion and $1.5 billion. The Company determined that such valuation represented a per Share price of approximately $38 to $41.

On October 9, 2008, the Board met telephonically, together with members of the Company s management and representatives of the Company s legal and financial advisors. The Board was updated on the discussions that had

occurred with Johnson & Johnson since the October 5, 2008 meeting, including the refined valuation of the Company communicated by Johnson & Johnson on October 6, 2008. Management and the Company s advisors also updated the Board on Johnson & Johnson s continuing due diligence investigation of the Company. After discussion, the Board decided to further consider to Johnson & Johnson s indication of interest at the upcoming Board meetings on October 20 and 21, 2008. Messrs. Whitters and Levine then gave a presentation to the Board on the decline in sales that occurred in August and September 2008, which primarily resulted from a drop in elective

surgical procedure volume, and indicated that a revised 2009 forecast and strategic plan would be presented to the Board at the October 20, 2008 Board meeting.

On October 13, 2008, the Company provided Johnson & Johnson with an updated summary of its projected financial results for the fiscal year ending March 31, 2009, which reflected a further downward adjustment to the Company s sales projections, and a preliminary summary of the Company s expected financial results for the quarter ended September 26, 2008. On October 16, 2008, Ms. McCoy advised Mr. Levine that Johnson & Johnson had revised and lowered its valuation of the Company to $1.2 billion. Ms. McCoy explained to Mr. Levine that the revised valuation was a result of Johnson & Johnson s ongoing diligence as well as its concerns regarding the Company s deteriorating financial outlook and the then-current state of the global economic environment. The Company noted that the revised valuation represented a per Share price of $33.35 and determined that such price offered a premium of approximately 100% over the closing price of the Shares on the New York Stock Exchange (the *NYSE*) on October 16, 2008.

On October 20, 2008, the Board met in Marina del Rey, California. Members of the Company s management and representatives of the Company s legal and financial advisors participated in the meeting. Mr. Levine discussed with the Board, among other things, (i) the ongoing decline in the demand for the Company s products, which was primarily driven by a decline in elective surgical procedures, (ii) global economic conditions that were negatively impacting elective surgical procedure volumes, (iii) management s revised strategic plan, which showed substantial declines in anticipated revenues, and operating income and cash flows as compared to the previous plan, (iv) management s revised forecast for the 2009 fiscal year, which reflected lower revenues, (v) management s uncertainty regarding when demand for the Company s products would reach previously anticipated levels and (vi) management s view that the foregoing developments presented fundamental challenges to the Company s core surgical implant business and created significant risks to the Company s ability to continue to fund its product development efforts in accordance with its plan and remain an independent company. Mr. Levine also discussed with the Board certain financial data set forth in the projections described below under the heading Financial Projections. Following Mr. Levine s presentation, the Board was given an update on the valuation that Johnson & Johnson had proposed on October 16, 2008. The Company s financial advisor discussed with the Board recent events in the global financial markets and the significant decline in the trading price of the Shares since September 15, 2008 and noted that unprecedented volatility had occurred in the U.S. capital markets and, based on publicly available reports and data, that U.S. economic forecasts had been revised significantly downward. The Company s financial advisor then updated the Board regarding certain financial matters pertaining to the Company based on financial information provided by the Company s management. The Board also discussed with the Company s management and financial advisor certain companies with businesses in or adjacent to the medical aesthetics industry that might have strategic interest in and be financially capable of acquiring portions of the Company s business and the limited number of potential strategic buyers that might be interested in acquiring the entire Company. The Board then considered, with input from other participants, the advisability of: (a) proceeding with a sale of the Company to Johnson & Johnson; (b) proceeding with a broader sale process that would include Johnson & Johnson and other invited participants; and (c) remaining an independent company. The Board discussed whether the Company s financial advisor should contact other prospective buyers in an effort to obtain a higher value for the Company. In these discussions, the Board focused, among other things, on the unsuccessful efforts to sell the Company in 2004 and 2005 and the fact, since 2005, that no other third parties with which the Company s management had periodic business discussions, other than Johnson & Johnson, had expressed an interest in acquiring the Company. Based on these discussions, the Board determined that the absence of any indication of interest in 2004 and 2005, in a significantly more robust financial market and a significantly stronger economic environment with substantially greater financing opportunities the previously articulated views on the limited number of potential strategic buyers for the entire Company, made it unlikely that the Company would identify interested and financially capable buyers that could act without significant delay and with certainty in the current market in acquiring the entire Company. The Board also concluded that diverting management s time and attention and committing the Company s financial resources to such an effort in light of its unlikely prospect for success was not in the best interest of the Company or its shareholders. In addition, the Board expressed concern that

pursuing other potential buyers would likely result in significant delays in finalizing an agreement with Johnson & Johnson. In particular, the Board was concerned that, in light of the continued deterioration of U.S. economic conditions and the difficulties facing the Company, there was significant risk that any such delay could lead to decreasing

valuations for the Company by Johnson & Johnson or any other third party buyer, or could result in Johnson & Johnson deciding to terminate discussions and abandon its interest in purchasing the Company. The independent members of the Board (who were all of the members of the Board other than Mr. Levine) then met in an executive session with representatives of the Company s legal advisor and discussed the directors duties to the Company s shareholders and appropriate considerations when evaluating the alternatives of selling the Company and continuing as an independent entity. The independent directors then engaged in an extensive discussion of the matters presented at the Board meeting, with an emphasis on the continuing global economic turmoil, the decline in demand for the Company s products and management s revised outlook for the Company, and the challenges these facts posed to the Company s core surgical implant business and the Company s ability to remain an independent company. The independent directors considered these matters in light of the valuation ranges being proposed by Johnson & Johnson. Following this discussion, the independent directors unanimously concluded that the Company should proceed with negotiating a sale of the Company to Johnson & Johnson.

The Board meeting reconvened the morning of October 21, 2008, with members of the Company s management and representatives of the Company s legal and financial advisors present. Mr. Whitters presented the independent directors conclusion that the Company should proceed with negotiating a sale transaction to Johnson & Johnson. After discussion, the full Board unanimously determined that the Company should proceed with negotiating a sale of the Company to Johnson & Johnson, and instructed the Company s management and legal and financial advisors not to actively solicit other potential buyers. The Board authorized and directed Mr. Whitters to contact Mr. Weldon to convey that the Company was interested in pursuing a sale transaction with Johnson & Johnson. The Board also instructed Mr. Whitters to encourage Johnson & Johnson to increase its valuation of the Company and instructed the Company s management and legal and financial advisors to focus on obtaining deal protection provisions in the Merger Agreement that would not unduly deter other potential acquirers from proposing alternative transactions and would provide the Company with an ability to accept a superior acquisition proposal made by a third party after execution of the Merger Agreement.

Early in the afternoon of October 21, 2008, Mr. Whitters telephoned Mr. Weldon and encouraged Johnson & Johnson to increase its valuation of the Company. Mr. Weldon responded that he would need to discuss this matter internally, and that he would respond to Mr. Whitters after doing so.

On the afternoon of October 24, 2008, Mr. Weldon telephoned Mr. Whitters and conveyed that, due to financial market and other considerations, Johnson & Johnson was not willing to increase its indicated valuation of $1.2 billion for the Company. Later in the afternoon of October 24, 2008, the Board held a telephonic meeting in which representatives of the Company s legal and financial advisors participated. Mr. Whitters updated the Board on his call with Mr. Weldon regarding Johnson & Johnson s valuation of the Company. Following discussion, and in light of the matters discussed at the Board meetings on October 20 and 21, 2008, the Board unanimously supported pursuing a transaction with Johnson & Johnson at the $1.2 billion valuation level, and management and the Company s legal and financial advisors were directed to continue negotiations with Johnson & Johnson.

In the evening of October 24, 2008, Johnson & Johnson delivered a draft of the Merger Agreement to the Company. On October 27, 2008, Morrison delivered comments on the draft Merger Agreement to Cravath, Swaine & Moore LLP *(Cravath)*, outside legal counsel to Johnson & Johnson. On October 29, 2008, Cravath delivered a revised version of the draft Merger Agreement to Morrison.

On October 30, 2008, the Board held a telephonic meeting at which members of the Company s management and representatives of the Company s legal and financial advisors participated. Representatives of the Company s legal advisor summarized certain principal terms and conditions of the draft Merger Agreement which had been previously distributed to the Board. The discussion focused on the terms and mechanics of the all-cash tender offer, issues relating to restrictions on the Company s ability to solicit and accept an alternative acquisition proposal, the amount of

the break-up fee potentially payable to Johnson & Johnson, the conditions to Johnson & Johnson s obligation to complete the transaction, restrictions on the Company s conduct during the period between signing of the Merger Agreement and the closing of the Merger, the Company s representations and warranties and the rights of the parties to terminate the Merger Agreement. The directors indicated that they were primarily focused on the conditions to Johnson & Johnson s obligation to complete the transaction and the Company s ability to accept a superior acquisition proposal. In particular, the Board stated that it wanted to see improvement in the following

provisions in the Merger Agreement: (a) the proposed break-up fee of 3.5% of the transaction value, (b) the proposed restrictions on the Company s rights to terminate the agreement if the Board was presented with an unsolicited competing superior proposal, (c) the proposed definition of material adverse effect and (d) the proposed closing conditions. The Board directed the Company and its advisors to continue their discussions with Johnson & Johnson. In addition, the Board formed a special committee of disinterested directors (as defined in the MBCA) to evaluate, negotiate and approve a potential transaction with Johnson & Johnson. Messrs. Whitters, Emmons, Faster, and Rosen, and Ms. Jordan and Ms. Napier were designated to serve as the members of the special committee. Also at this meeting, the Board received a report from management indicating that sales of the Company s products continued to be lower than expected for the full month of October primarily due to a continuing decrease in elective surgical procedure volumes.

During the evening of October 30, 2008, representatives of Morrison and Cravath discussed key issues relating to the draft Merger Agreement. On November 1, 2008, Morrison delivered an updated draft of the Merger Agreement to Cravath, and on November 2, 2008, representatives of Morrison and Cravath further discussed the outstanding issues with respect to the terms of the proposed transaction.

On November 3, 2008, Mr. Gorsky informed Mr. Levine that, in light of information recently received as part of the due diligence investigation, Johnson & Johnson was not prepared to proceed with a transaction with the Company at that time.

On November 4, 2008, the Board held a telephonic meeting at which members of the Company s management and representatives of the Company s legal and financial advisors were present. Mr. Levine updated the Board on the discussions that had taken place with Mr. Gorsky. Following discussion, the Board determined that the Company s management needed to focus on the Company s continuing operations in light of Johnson & Johnson s reluctance to proceed with a transaction at that time, and directed management and the Company s legal and financial advisors to cease negotiations and due diligence activities with Johnson & Johnson. However, management was directed to be responsive if Johnson & Johnson desired to re-engage in due diligence and negotiations. Following the meeting, Mr. Levine contacted Mr. Gorsky and conveyed the Board s decision.

On November 5, 2008, the Company released its results of operations for its fiscal quarter ended September 30, 2008. In connection with this release, the Company lowered its guidance for the 2009 fiscal year by announcing that it anticipated revenue in the range of $355 million to $370 million and earnings per share in the range of $1.10 to $1.20. Prior to the time of the announcement, median analyst consensus estimates had projected that the Company would achieve revenue for the 2009 fiscal year of $402 million and earnings per share of $1.40.

Between November 4, 2008 and November 13, 2008, the Company conducted additional diligence to obtain information that it believed would assist Johnson & Johnson in completing its due diligence review of the Company. The Company shared this information with Johnson & Johnson on November 13, 2008.

On November 15, 2008, Mr. Levine and Mr. Gorsky discussed the additional information that was provided to Johnson & Johnson to assist in its due diligence investigation. Mr. Levine and Mr. Gorsky also discussed several items that Johnson & Johnson viewed as adversely impacting its valuation of the Company, including continued deterioration in demand for the Company s products and the impact on the Company s sales projections and other matters.

On November 17, 2008, Mr. Gorsky called Mr. Levine to convey a non-binding proposal to purchase the Company at a revised $1.1 billion valuation. The Company determined that such amount represented a per Share price of approximately $30.25. Johnson & Johnson s proposal was not subject to a financing condition, but was contingent on satisfactory completion of Johnson & Johnson s due diligence investigation. Mr. Gorsky explained to Mr. Levine that

the revised valuation contained in this proposal was due to Johnson & Johnson s concern regarding the continued deterioration in demand for the Company s products and the receipt of new information regarding the competitive environment facing the Company.

On November 18, 2008, the Board held a telephonic meeting at which members of the Company s management and representatives of the Company s legal and financial advisors were present. Mr. Levine updated the Board on Johnson & Johnson s revised non-binding proposal. Representatives of Morrison advised the directors regarding their fiduciary duties and also updated the Board on unresolved issues relating to the Merger Agreement. The Board,

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with input from others in attendance, discussed the continuing adverse developments in the global economy and the risks to the Company s business plan, including weakness in the aesthetics market and continued deterioration in the Company s sales and financial outlook. After extensive deliberation, the Board authorized and directed management and the Company s legal and financial advisors to: (a) facilitate the completion of Johnson & Johnson s diligence review of the Company (including providing renewed access to the virtual data room), and (b) communicate to Johnson & Johnson that the Board was prepared to continue with a transaction at a $1.150 billion valuation of the Company, subject to the requirements that (i) the transaction break-up fee be less than 3.0% of the value of the transaction and (ii) the definition of material adverse effect and certain of the closing conditions in the draft Merger Agreement be revised in a manner acceptable to the Board. During the afternoon of November 18, 2008, Johnson & Johnson and its advisors were again given access to the virtual data room, and Johnson & Johnson continued to work to complete its diligence investigation of the Company. In addition, in accordance with the Board s directives, representatives of the Company s financial advisor contacted Johnson & Johnson to arrange a conference call to discuss the Board s view regarding valuation and certain open items in the draft Merger Agreement.

On November 20, 2008, the Company s management and legal and financial advisors participated in a conference call with Johnson & Johnson and its legal advisor. The Company proposed a potential transaction at a $1.150 billion valuation and presented its position on the transaction break-up fee, definition of material adverse effect and certain closing conditions contained in the draft Merger Agreement. Following the conference call representatives of Morrison sent additional comments on the draft Merger Agreement to Cravath. Later in the day on November 20, 2008, Mr. Gorsky called Mr. Levine and proposed increasing Johnson & Johnson s bid to a $1.117 billion valuation, which, according to the Company s calculations, would represent a per Share price of $30.82. Mr. Gorsky also stated that Johnson & Johnson was willing to agree to a break-up fee of slightly less than 3.0% of the value of the transaction and to modify the definition of material adverse effect and certain closing conditions in the Merger Agreement in a manner that would be acceptable to the Board.

On November 21, 2008, the Board held a telephonic meeting at which members of the Company s management and representatives of the Company s legal and financial advisors were present. Mr. Levine updated the Board on the discussions that occurred on November 20, 2008 with Johnson & Johnson. After extensive discussions, the Board authorized and directed management and the Company s legal and financial advisors to propose to Johnson & Johnson a transaction at $31.00 per Share. The Board noted that this represented a premium of approximately 110% over the closing price of the Shares on the NYSE on November 21, 2008. Following the meeting, Mr. Levine telephoned Mr. Gorsky and conveyed the Board s desire to proceed with a transaction at $31.00 per Share. Shortly thereafter Mr. Gorsky called Mr. Levine and presented Johnson & Johnson s revised offer to purchase the Company at $31.00 per Share, subject to satisfactory completion of the Merger Agreement and Johnson & Johnson s due diligence investigation.

From November 21, 2008 to December 1, 2008, representatives of the Company and Johnson & Johnson had frequent discussions regarding finalizing the Merger Agreement and the related documents, and Johnson & Johnson continued to finalize its due diligence review. Further, during this period, Mr. Levine and other members of the Company s man