



The following documents filed by Humana Inc. (the "Company" or the "Registrant") with the Commission (File No. 1-5975) are incorporated herein by reference and made a part hereof:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2001;
- (b) The description of the Registrant's Common Stock, par value \$0.16-2/3 per share (the "Common Stock"), contained in the Registrant's Registration Statement on Form 8-A, as such description may be amended or updated.

All documents filed by the Company pursuant to Sections 13, 14 and 15(d) of the Securities Exchange Act of 1934 ("Exchange Act"), subsequent to the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all of the securities offered have been sold or which deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof 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contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.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.**

The Company's authorized capital stock consists of (i) 300,000,000 shares of Common Stock, of which 168,887,235 shares were issued and outstanding as of April 1, 2002; (ii) 10,000,000 shares of Preferred Stock, par value \$1.00 per share, of which none were issued or outstanding as of April 1, 2002.

#### **Item 5. Interest of Named Experts and Counsel.**

The validity of the issuance of the shares of Common Stock being offered by the Registration Statement will be passed upon for the Registrant by Kathleen Pellegrino, Vice President and Associate General Counsel of the Registrant. As of April 1, 2002, Ms. Pellegrino owned 61,641 shares of Common Stock, has 6,790 shares of Common Stock in the Humana Retirement and Savings Plan, and also has stock options to purchase 87,871 shares of Common Stock of the Registrant.

#### **Item 6. Indemnification of Directors and Officers.**

Section 145 of the Delaware General Corporation Law (the "DGCL") permits a Delaware corporation to indemnify any person who was or is, or is threatened to be made, a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation) by reason of the fact that such person is or was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and with respect to any criminal action or proceeding, such person had no reasonable cause to believe the conduct was unlawful. A Delaware corporation may indemnify such persons in actions brought by or in the right of the corporation to procure a judgment in its favor under the same conditions, except that no indemnification is permitted in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the corporation unless and to the extent the Court of Chancery of the State of Delaware, or the court in which such action or suit is brought, determines upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the Court of Chancery or other such court deems proper. To the extent such person has been successful on the merits or otherwise in defense of any action referred to above, or in defense of any claim, issue or matter therein, the corporation must indemnify such person against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. Corporations, under certain circumstances, may pay expenses incurred by an officer or director in advance of the final disposition of an action for which indemnification may be permitted or required. The indemnification and advancement of expenses provided for or granted pursuant to Section 145 of the DGCL are not exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise. Section 145 further provides that a corporation may maintain insurance against liabilities for which indemnification is not expressly provided by statute.

Article X of the Company's By-Laws essentially provides for indemnification of directors, officers, employees and agents of the Company to the fullest extent authorized under the DGCL.

The Tenth Article of the Company's Restated Certificate of Incorporation provides that a director of the Company shall not be personally liable to the Company or its stockholders 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 stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

The Company has in effect officers and directors liability insurance policies with various insurance companies. The policies provide indemnity to the directors and officers of the Company for loss arising from claims concerning a covered wrongful act where there is no corporate indemnification. The insurance will also reimburse the Company for indemnification it may be required by statute or the Company's By-laws to make to any of its directors and officers in connection with a claim by reason of a wrongful act. The policies cover negligent acts, errors, omissions, or breach of duty by a director or officer. The principal exclusions from coverage include the following: (i) claims involving violations of Section 16(b) of the Exchange Act; (ii) dishonest acts; and (iii) libel, slander or non-monetary damages. Effective March 31, 2002, the policies generally provide for a \$2,500,000 deductible self-insurance retention by the Company with the limit of liability under the policies of \$100,000,000 in the aggregate for coverage in excess of deductibles and participations.

The Company has entered into Indemnity Agreements (the "Agreements") with its directors and officers ("Indemnitees"), whereby the Company will indemnify such parties and advance expenses to the fullest extent permitted by the DGCL.

An Indemnitee will not be entitled to indemnification or advancement of expenses under the Agreements with respect to any proceeding or claim brought or made by the Indemnitee against the Company. If the Indemnitee is not entitled to indemnification of all expenses, he or she may still be indemnified for a portion of the expenses. The determination of entitlement to indemnification under the Agreements will be made by a majority of a quorum of disinterested directors, independent counsel or by the stockholders of the Company. In the event of a change in control of the Company (as defined in the Agreements), the determination of entitlement will be made, if the Indemnitee so elects, by an independent counsel selected by the Indemnitee, and the Company will have the burden of proof to overcome a presumption that the Indemnitee is entitled to indemnification.

The Agreements further provide that to the extent the Company maintains a liability insurance policy for directors, officers, employees, agents or fiduciaries,

the Indemnitee will be covered by such policy in accordance with its terms to the maximum extent of the coverage available for any such officer, director, employee, agent or fiduciary under the policy. The Agreements will terminate upon the later of: (a) 10 years after the date the Indemnitee ceases to serve; or (b) the final termination of all pending proceedings covered thereunder.

**Item 7. Exemption From Registration Claimed.**

Not Applicable.

**Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

**Item 9. Undertakings.**

(a) The undersigned 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 ("Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement;

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

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, 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) That for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, 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 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the DGCL, the Amended and Restated Certificate of Incorporation, the By-Laws of the Registrant and the Agreements or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than 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 Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

**The Registrant.**

Pursuant to the requirements of the Securities Act of 1933 ("Securities Act"), 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 on Form S-8 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Louisville, Commonwealth of Kentucky, on the 15<sup>th</sup> day of April, 2002.

HUMANA INC.  
NON-QUALIFIED STOCK OPTION PLAN FOR EMPLOYEES

By: /s/ Arthur P. Hipwell  
Arthur P. Hipwell  
Senior Vice President and  
General Counsel

**POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act, this Registration Statement and Power of Attorney have been signed below by the following persons in the capacities and on the dates indicated.

Each person whose signature appears below constitutes and appoints Michael B. McCallister and Arthur P. Hipwell, and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution to execute in his or her name and on his or her behalf, and to file any amendments

(including, without limitation, post-effective amendments) to this Registration Statement necessary or advisable in the opinion of any of them to enable the Company to comply with the Securities Act, and any rules, regulations and requirements of the Commission thereunder, in connection with the registration of the additional securities which are under the subject of this Registration Statement.

BY: /s/ David A. Jones  
David A. Jones  
Chairman of the Board and Director

DATE: April 15, 2002

BY: /s/ James H. Bloem  
James H. Bloem  
Senior Vice President & Chief Financial Officer,  
(Principal Financial & Accounting Officer)

DATE: April 15, 2002

BY: /s/ Michael E. Gellert  
Michael E. Gellert  
Director

DATE: April 15, 2002

BY: /s/ John R. Hall  
John R. Hall  
Director

DATE: April 15, 2002

BY: /s/ David A. Jones, Jr.  
David A. Jones, Jr.  
Director

DATE: April 15, 2002

BY: /s/ Irwin Lerner  
Irwin Lerner  
Director

DATE: April 15, 2002

BY: /s/ Michael B. McCallister  
Michael B. McCallister  
President, Chief Executive Officer and Director

DATE: April 15, 2002

BY: /s/ W. Ann Reynolds, Ph.D.  
W. Ann Reynolds, Ph.D.  
Director

DATE: April 15, 2002

#### Exhibit Index.

4.1 Restated Certificate of Incorporation filed with the Secretary of State of Delaware on November 9, 1989, as restated to incorporate the amendment of January 9, 1992, and the correction of March 23, 1992. Exhibit 4(i) to the Company's Post-Effective Amendment No. 1 to the Company's Registration Statement on Form S-8 (Reg. No. 33-49305) filed February 2, 1994 is incorporated by reference herein.

4.2 By-Laws as amended. Exhibit 3(b) to the Company's Annual Report for the year ended December 31, 1997, is incorporated by reference herein.

4.3 Form of Amended and Restated Rights Agreement, dated February 14, 1996, between Humana Inc. and Mid-America Bank of Louisville and Trust Company. Exhibit 1.3 to the Registration Statement (File No. 1-5975) on Form 8-A/A dated February 14, 1996, is incorporated by reference herein.

4.4 Amendment No. 1 dated May 27, 1998, to Amended and Restated Rights Agreement, dated February 14, 1996 between Humana Inc. and Mid-America Bank of Louisville and Trust Company ("Rights Agreement"). Exhibit 4.2 to the Registration Statement (File No. 1-5975 on Form 8-A/A dated June 15, 1998 is incorporated by reference herein.

4.5 Amendment No. 2 dated as of March 1, 1999 to the Rights Agreement. Exhibit 4.3 to the Registration Statement (File No. 1-5975) on Form 8-A12B/A dated February 26, 1999 is incorporated by reference herein.

- 4.6 Indenture dated as of August 2001 covering the Company's 7 1/4% Senior Notes due 2006. Exhibit 4.1 to Registration Statement No. 333-63384 is incorporated by reference herein.
5. Opinion of counsel as to the validity of the securities registered herein, filed herewith.
- 23.1 Consent of PricewaterhouseCoopers LLP, independent accountants for the Registrant, filed herewith.
- 23.2 Consent of counsel, included in 5 above.
- 24 Powers of Attorney (included on the signature page of this (Registration Statement)).
- 99 Humana Inc. Non-Qualified Stock Option Plan for Employees, as amended, filed herewith.

Exhibit 5

April 15, 2002

Humana Inc.  
500 West Main Street  
Louisville, KY 40202

Form S-8 Registration Statement - Amendment No. 1  
No. 333-86801

Ladies and Gentlemen:

I am Vice President and Associate General Counsel for Humana Inc., a Delaware Corporation (the "Company"), and have been involved with the preparation of an amended Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, covering an aggregate of Three Hundred Thousand (300,000) shares of the common stock, par value \$0.16 2/3 per share (the "Shares") to be issued in connection with the Company's Non-Qualified Stock Option Plan for Employees (the "Plan").

I have examined and am familiar with the Restated Certificate of Incorporation and Restated By-Laws of the Company and the various corporate records and proceedings related to the organization of the Company and the proposed issuance of Shares. I have also examined such other documents as I have considered necessary for the purpose of this opinion.

Based on the foregoing, it is my opinion that the Shares have been duly authorized and, when issued and paid for in accordance with the terms of the Plan, will be validly issued, fully paid and nonassessable.

I hereby consent to the filing of this opinion as an Exhibit to the Registration Statement.

Sincerely,

/s/ Kathleen Pellegrino

Kathleen Pellegrino  
Vice President and Associate General Counsel

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated February 4, 2002 relating to the financial statements and financial statement schedule of Humana Inc., which appear in Humana Inc.'s Annual Report on Form 10-K for the year ended December 31, 2001.

/s/ Pricewaterhouse Coopers LLC

Louisville, Kentucky  
April 15, 2002

NON-QUALIFIED STOCK OPTION PLAN FOR EMPLOYEES  
As Amended March 14, 2002

1. PURPOSE. The purpose of the Non-Qualified Stock Option Plan for Employees (the "Plan") is to enable Humana Inc., a Delaware corporation, and its subsidiaries (collectively the "Company") to attract and retain capable employees and to provide a long-range inducement for employees to remain in the management of the Company, to perform at increasing levels of effectiveness, to acquire a stake in the Company with the interest and outlook of an owner and to realize an economic benefit from any future appreciation in the price of the Company's common stock. These objectives will be promoted through the granting to employees of non-qualified options to acquire shares of common stock of the Company pursuant to the terms of the Plan.

2. DEFINITIONS AND INTERPRETATION.

2.1 Defined Terms. Except as otherwise stated herein, defined terms whenever used in this Plan, shall have the same meaning as defined in the Humana Inc. 1996 Stock Incentive Plan for Employees or its successor.

2.2 Gender and Number. Except when otherwise indicated by context, reference to the masculine gender shall include the feminine gender and any term used in the singular shall also include the plural.

3. ADMINISTRATION. The Board shall appoint the committee to administer the Plan. The members of the Committee shall not be eligible to receive Options. In accordance with and subject to the provisions of the Plan, the Committee shall (a) select the employees to whom Options shall be granted; (b) determine the number of shares to be included in each Option; (c) determine the time at which the Option is to be granted; (d) define the Option period; (e) determine the duration and purposes for leaves of absences, which may be granted to an Employee on an individual basis without constituting termination of employment for purposes of the Plan; (f) determine when Options may be exercised; and (g) establish such other provisions of the Agreement as the Committee may deem necessary or desirable. The Committee shall have full authority in its discretion to determine when Options may be exercised, including the ability to accelerate exercise dates of Options previously granted under the Plan and to extend the exercise period. From time to time the Committee may adopt such rules and regulations for carrying out the Plan as it may deem proper and in the best interest of the Company. However, in no event may Options be repriced under the Plan without shareholder approval. The interpretation of any provision of the Plan by the Committee shall be final.

4. ELIGIBILITY. Executive Officers, as defined in the Exchange Act, and Directors of the Company are not eligible to participate in the Plan. Any other employee ("Employee") of the Company whose judgment, initiative and efforts contribute or may be expected to contribute materially to the successful performance of the Company shall be eligible to receive Options under the Plan.

5. SHARES AVAILABLE FOR OPTIONS. The Shares to be subject to Options under the Plan may be either authorized and unissued or held in the Treasury of the Company. As amended, the total amount of Shares for which Options may be granted under the Plan shall not exceed One Million Seven Hundred Thousand (1,700,000) Shares. The maximum number of Shares which may be authorized by the Board over the life of the Plan shall not exceed 2% of the Shares outstanding. Such number of Shares is subject to adjustment as provided herein. In the event that an Option granted under the Plan to any Employee expires, is cancelled or is otherwise terminated for any reason without having been exercised or a

payment having been made, any unexercised shares covered thereby shall be available for the granting of Options under the Plan.

6. OPTION CONDITIONS. The Committee shall set forth in a related Agreement the terms, conditions and limitations applicable to each grant, including but not limited to those specified in the Plan.

7. OPTION PRICE. The Option exercise price per Share purchasable under an Option shall be determined by the Committee at the time of grant, but in no event shall the exercise price of an Option be less than one hundred percent (100%) of the Fair Market Value of the Stock on the date of the grant of such Option.

8. OPTION TERM. The term of each Option shall be fixed by the Committee.

9. EXERCISE OF OPTION. The exercise of an Option shall be made only by a written notice delivered in person or by mail to the Secretary of the Company at the Company's principal executive office, specifying the number of Shares to be exercised and accompanied by payment therefore and otherwise in accordance with the Agreement pursuant to which the Option was granted. The purchase price of the Shares as to which an Option shall be exercised shall be paid in full at the time of exercise at the election of the holder of an Option (a) in cash or currency of the United States of America, (b) if approved by the Committee, by tendering to the Company Shares then owned having a Fair Market Value equal to the cash exercise price of the Option being exercised, or (c) a combination of (a) and (b). Such Fair Market Value for the tendered Shares shall be determined as of the close of the business day immediately preceding the day on which the Option is exercised. The right to purchase Shares shall be cumulative so that when the right to purchase any Shares has accrued such Shares or any part thereof may be purchased at any time thereunder until the expiration or termination of the Option.

10. TAX WITHHOLDING. With respect to any Option the Committee may, in its discretion and subject to such rules as the Committee may adopt to comply with Exchange Act, Code or other rules, permit an employee to satisfy, in whole or in part, any withholding tax obligation which may arise in connection with the exercise of such option by electing to (a) have the Company collect or withhold cash; or (b) deliver to the Company, on the date on which the amount of tax to be withheld is determined (the "Tax Date"), Shares owned prior to or acquired in such Option exercise having a Fair Market Value equal to the amount of the withholding tax; or (c) a combination of (a) and (b).

11. TERMINATION OF EMPLOYMENT, DEATH OR DISABILITY. If the employment of an Employee is terminated for Cause, all the Option rights of such Employee, whether or not exercisable, under any then outstanding Option shall terminate immediately.

If the employment of the Employee is terminated for any reason other than for Cause, Retirement, death or Disability, an Option shall be exercisable by such Employee or a personal representative at any time prior to the expiration date of the Option or within ninety (90) days after the date of such termination, whichever is the shorter period, but only to the extent of the accrued right to exercise at the date of such termination.

In the event of Retirement, an Option shall be exercisable by such Employee at any time prior to the expiration date of the Option or within two (2) years after the date of such Retirement, whichever is the shorter period, but only to the extent of the accrued right to exercise at the date of Retirement.

In the event of death or Disability of an Employee while in the employ of the Company, all Options of such Employee then outstanding shall become immediately exercisable. In the event of death of an Employee, all Options of such Employee shall be exercisable by the person or the persons to whom those rights pass by will or by the laws of descent and distribution or, if appropriate, by the legal representative of the estate of the deceased Employee at any time within two (2) years after the date of such death, regardless of the expiration date of the Option. In the event of Disability of an Employee all Options of such Employee shall be exercisable by the Employee or, if incapacitated, by a legal representative at any time within two (2) years of the date of determination of Disability regardless of the expiration date of the Options.

12. RESTRICTIONS ON TRANSFER. No Option granted under the Plan shall be transferable by an Employee other than by will or, if the Employee dies intestate, by the laws of descent and distribution of the state of such Employee's domicile at the time of death. An Option shall be exercisable during the lifetime of an Employee only by such Employee or, if incapacitated because of Disability, by a legal representative.

13. EFFECT OF CHANGE IN CONTROL. Except as may be set forth in an Agreement, in the event of a Change in Control, all Options outstanding on the date of such Change in Control shall become immediately and fully exercisable. In the event an Employee's employment with the Company is terminated other than for Cause within two (2) years following a Change in Control, each Option held by the Employee that was exercisable as of the date of termination of the Employee's employment or service shall remain exercisable for a period ending the earlier of the second anniversary of the termination of the Employee's employment or service or the expiration of the stated term of the Option.

14. CAPITAL ADJUSTMENTS AFFECTING SHARES. In the event of a capital adjustment resulting from a stock dividend, stock split, reverse stock split, reorganization, merger, consolidation, combination or exchange of stock, spinoff or other change in corporate structure or capitalization affecting the stock, the number of Shares or other stock or securities subject to the Plan and the number of Shares or other stock or securities subject to Options shall be adjusted in a manner consistent with such capital adjustment. The purchase price of the Shares, stock or other securities subject to Options shall be adjusted so that there will be no material increase in the aggregate purchase price payable upon exercise of any such Options or other options or rights granted; provided, however, that such adjustments shall be made in a manner which preserves, without exceeding, the then existing value of the Option.

15. CORPORATE MERGERS, ACQUISITIONS, ETC. The Committee may grant Options or, with the consent of the Option holder, modify Options under the Plan to include such provisions as it deems necessary and in the best interest of the Company and the Employee to preserve for the Employee the benefits of any appreciation of the underlying stock during the term of the Option, which benefits might otherwise be lost as a result of a Change in Control of the Company.

16. AMENDMENT TO THE PLAN. The Board shall have the right to amend, including the addition of Shares to the Plan, suspend or terminate the Plan at any time without the approval of Stockholders of the Company, to the extent such approval is not required pursuant to the Exchange Act, except in no event may Options be repriced without shareholders' approval.

17. EFFECTIVE DATE AND TERM OF THE PLAN. The effective date of the Plan is September 9, 1999. No Options may be granted under the Plan after September 9, 2004.

18. MAXIMUM OPTIONS TO AN INDIVIDUAL EMPLOYEE. No individual Employee may be granted Options to purchase Shares in excess of fifteen percent (15%) of the number of Shares available under the Plan.

19. RIGHTS OF EMPLOYEES. No Employee shall be deemed for any purpose to be the owner of any Shares subject to any Option unless and until (a) the Option shall have been exercised pursuant to the terms thereof, (b) the Company shall have issued and delivered Shares to the Employee, and (c) the Employee's name shall have been entered as a stockholder of record on the books of the Company. Thereupon, the Employee shall have full voting, dividend and other ownership rights with respect to such Shares, subject to such terms and conditions as may be set forth in the applicable Agreement.

20. "POOLING TRANSACTION". Notwithstanding anything contained in the Plan or any Agreement to the contrary, in the event of a Change in Control, which has been approved by the Board, which is also intended to constitute a Pooling Transaction, the Committee shall take such actions, if any, which are specifically recommended by an independent accounting firm retained by the Company to the extent reasonably necessary in order to assure that the Pooling Transaction will qualify as such, including but not limited to (i) deferring the vesting, exercise, payment, settlement, or lapsing of restriction with respect to any Option, (ii) providing that the payment or settlement in respect of any Option be made in the form of cash, Shares or securities of a successor or acquirer of the Company, or a combination of the foregoing and (iii) providing for the extension of the term of any Option to the extent necessary to accommodate the foregoing, but not beyond the maximum term permitted for any Option.

21. NON-EXCLUSIVITY OF THE PLAN. The adoption of the Plan by the Board shall not be construed as amending, modifying or rescinding any previously approved incentive arrangement or as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options otherwise than under the Plan, and such arrangements may be either applicable generally or only in specific cases.

22. LIMITATION OF LIABILITY. As illustrative of the limitations of liability of the Company, but not intended to be exhaustive thereof, nothing in the Plan shall be construed to:

(a) give any person any right to be granted an Option other than at the sole discretion of the Committee;

(b) give any person any rights whatsoever with respect to Shares except as specifically provided in the Plan;

(c) limit in any way the right of the Company or any Subsidiary to terminate the employment of any person at any time; or

(d) be evidence of any agreement or understanding, expressed or implied, that the Company will employ any person at any particular rate of compensation or for any particular period of time.

23. REGULATIONS AND OTHER APPROVALS; GOVERNING LAW.

23.1 Except as to matters of federal law, the Plan and the rights of all persons claiming hereunder shall be construed and determined in accordance with the laws of the

State of Delaware without giving effect to conflicts of laws principles thereof.

23.2 The obligation of the Company to sell or deliver Shares with respect to Options under the Plan shall be subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Committee.

23.3 The Board may make such changes as may be necessary or appropriate to comply with the rules and regulations of any government authority, or to obtain for Employees the tax benefits under the applicable provisions of the Code and regulations promulgated thereunder.

23.4 Each Option is subject to the requirement that, if at any time the Committee determines, in its discretion, that the listing, registration or qualification of Shares issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Option, no Options shall be granted or payment made or Shares issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions as acceptable to the Committee.

23.5 Notwithstanding anything contained in the Plan or any Agreement to the contrary, in the event that the disposition of Shares acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act of 1933, as amended (the "Securities Act"), and is not otherwise exempt from such registration, such Shares shall be restricted against transfer to the extent required by the Securities Act and Rule 144 or other regulations thereunder. The Committee may require any individual receiving Shares pursuant to an Option granted under the Plan, as a condition precedent to receipt of such Shares, to represent and warrant to the Company in writing that the Shares acquired by such individual are acquired without a view to any distribution thereof and will not be sold or transferred other than pursuant to an effective registration thereof under said Act or pursuant to an exemption applicable under the Securities Act or the rules and regulations promulgated thereunder. The certificates evidencing any of such Shares shall be appropriately amended or have an appropriate legend placed thereon to reflect their status as restricted securities as aforesaid.