

JAMES HARDIE INDUSTRIES N.V.

Form 425

August 19, 2009

FILED BY JAMES HARDIE INDUSTRIES N.V.  
PURSUANT TO RULE 425 UNDER THE  
SECURITIES ACT OF 1933  
SUBJECT COMPANY:  
JAMES HARDIE INDUSTRIES N.V.  
(REGISTRATION NO. 333-160177)

18 August 2009

For analyst and media enquiries please  
call Sean O Sullivan on: (02) 8274 5239

**Address to 2009 Extraordinary Meetings**

**Michael Hammes, Chairman, James Hardie**

With this and the Extraordinary General meeting to be held in Amsterdam on Friday, the Supervisory and Managing Boards are putting before shareholders the first stage in the Proposal to change the company's domicile to Ireland from The Netherlands, and, in the process, address one of the more complex issues that the company has been dealing with since 2004.

Following amendments to the US/Netherlands Tax Treaty in 2004, and their application to James Hardie in 2006, the current domicile structure has become increasingly difficult.

In particular, the requirement to have management located in The Netherlands and a continuing significant risk of, potentially costly, disputes with the IRS that could involve annual penalties of up to US\$50 million again means that The Netherlands is no longer appropriate for James Hardie.

While the present management team has done a remarkable job in managing the company from The Netherlands, it has become increasingly difficult to do this, particularly in light of the present challenging operating environment in the United States. We believe it is critically important that our key senior managers are able to spend more time with James Hardie's operations and in its markets.

Furthermore, while the present management team's extensive experience within James Hardie has enabled them to manage the company from a distance, it's the Board's view, and my view, that this would be difficult for any successor management team.

The Board considered many alternatives, including re-domiciling either to the US or to Australia. In the end, however, the specific provisions of Dutch corporate law for such transactions and in particular the requirement for an acceptance threshold of 95 per cent of the entire issued share capital of the company were thought to be both practically impossible and overly complicated.

Dutch law does allow movement of domicile within the European Union subject to the more realistic hurdle of achieving shareholder support from 75 per cent of the votes cast. After much review, this is the route we pursued. We then conducted a review of European EU countries before proposing to move our domicile to Ireland. Ireland provides many benefits including having a stable political environment, a robust and similar legal regime, and a well-educated workforce. Another factor is, of course, that Ireland is open and welcoming to businesses migrating there.

So, what will change if the Proposal is approved and implemented?

Importantly, the Proposal will not change the overall commitment of James Hardie to make contributions to the Asbestos Injuries Compensation Fund under the Amended and Restated Final Funding Agreement.

However, if a contribution is due to the Asbestos Injuries Compensation Fund in the company's 2011 financial year, which is not yet known, the costs associated with the Proposal would reduce the amount of the company's contribution in that year.

The capacity of the Asbestos Injuries Compensation Fund to satisfy claims is linked to the long-term financial success of James Hardie, especially the company's ability to generate net operating cash flow and accepting an on-going annual IRS risk of up to US\$50 million. The Board felt was not in the interests of James Hardie and would be detrimental to its ability to make contributions to the fund over time.

In terms of the Proposal's effect on the Board's structure, the Board is going to be greatly simplified by this move. The Board is going to be simplified because we won't have multiple Boards anymore; we'll just have one Board, as is the normal practise in Australia and the US. I will continue as the non-executive Chairman, Louis will join the Board, and Donald McGauchie will continue from Australia as the Vice Chairman of the Board. The present Board members also plan to continue, subject to their election or re-election, and there will be one or two additional Board members added later.

Of primary importance, however, is the fact that an Irish domicile will allow our key executives to spend their time in James Hardie's key markets.

I would also like to reiterate that despite the emphasis that some have attributed to it corporate tax rates were not the primary consideration in determining our new domicile.

While tax will always be a consideration in any corporate transaction for any company, the driving forces in this proposal is the increasing difficulty of the current corporate domicile for James Hardie, both because of the management location issue and the continuing major risk with the IRS.

I will now briefly run through some of the details of the proposal and, after that, open the meeting to comments and questions.







**Media/Analyst Enquiries:**

Sean O Sullivan

Vice President, Investor and Media Relations

Telephone: +61 2 8274 5239

Email: [media@jameshardie.com.au](mailto:media@jameshardie.com.au)

Facsimile: +61 2 8274 5218

**Disclaimer: Forward looking statements**

This statement and presentation, and other statements that James Hardie Industries N.V. (James Hardie) may make, including statements about the benefits of James Hardie's transformation from a Dutch NV to a Dutch SE and subsequent redomicile to Ireland as an Irish SE (the Proposal), may contain forward-looking statements. We may from time to time make forward-looking statements in our periodic reports filed with or furnished to the US Securities and Exchange Commission on Forms 20-F and 6-K, in our annual reports to shareholders, in offering circulars, invitation memoranda and prospectuses, in media releases and other written materials and in oral statements made by our officers, directors or employees to analysts, institutional investors, existing and potential lenders, representatives of the media and others. Statements that are not historical facts are forward-looking statements and for US purposes such forward-looking statements are statements made pursuant to the Safe Harbor Provisions of the Private Securities Litigation Reform Act of 1995. Examples of forward-looking statements include:

statements about our future performance;

projections of our results of operations or financial condition;

statements regarding our plans, objectives or goals, including those relating to our strategies, initiatives, competition, acquisitions, dispositions and/or our products;

expectations concerning the costs associated with the suspension or closure of operations at any of our plants and future plans with respect to any such plants;

expectations that our credit facilities will be extended or renewed;

expectations concerning dividend payments;

statements concerning our corporate and tax domiciles and potential changes to them;

statements regarding tax liabilities and related audits and proceedings;

statements as to the possible consequences of proceedings brought against us and certain of our former directors and officers by the Australian Securities & Investments Commission;

expectations about the timing and amount of contributions to the Asbestos Injuries Compensation Fund, a special purpose fund for the compensation of proven Australian asbestos-related personal injury and death claims;

expectations concerning indemnification obligations; and

statements about product or environmental liabilities.

Words such as believe, anticipate, plan, expect, intend, target, estimate, project, predict, forecast, should, continue and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements. Readers are cautioned not to place undue reliance on these forward-looking statements and all such forward-looking statements are qualified in their entirety by reference to the following cautionary statements.

Forward-looking statements are based on our estimates and assumptions and because forward-looking statements address future results, events and conditions, they, by their very nature, involve inherent risks and uncertainties. Such known and unknown risks, uncertainties and other factors may cause our actual results, performance or other achievements to differ materially from the anticipated results, performance or achievements expressed, projected or implied by these forward-looking statements and future results could differ materially from historical performance. These factors, some of which are discussed under Risk Factors in James Hardie's Registration Statement (described

below under the heading "Additional information and where to find it" include but are not limited to:

- all matters relating to or arising out of the prior manufacture of products that contained asbestos by our current and former subsidiaries;
- required contributions to the Asbestos Injuries Compensation Fund and the effect of currency exchange rate movements on the amount recorded in our financial statements as an asbestos liability; compliance with and changes in tax laws and treatments;
- competition and product pricing in the markets in which we operate;
- the consequences of product failures or defects; exposure to environmental, asbestos or other legal proceedings;
- general economic and market conditions;
- the supply and cost of raw materials;
- the success of research and development efforts;
- reliance on a small number of customers; a customer's inability to pay; compliance with and changes in environmental and health and safety laws;
- risks of conducting business internationally; compliance with and changes in laws and regulations;
- currency exchange risks;
- the concentration of our customer base on large format retail customers, distributors and dealers;
- the effect of natural disasters;



changes in our key management personnel;

Inherent limitations on internal controls; use of accounting estimates;

and all other risks identified in our reports filed with Australian, Dutch and US securities agencies and exchanges (as appropriate).

We caution that the foregoing list of factors is not exhaustive and that other risks and uncertainties may cause actual results to differ materially from those in forward-looking statements. Forward-looking statements speak only as of the date they are made and are statements of our current expectations concerning future results, events and conditions and James Hardie does not undertake to update forward-looking statements.

**Additional information and where to find it**

In connection with the Proposal, James Hardie has lodged with Australian Securities Exchange (ASX) and filed with the United States Securities and Exchange Commission (SEC) a Registration Statement on Form F-4 with additional information concerning the Proposal, including an Explanatory Memorandum/prospectus. The Registration Statement has been declared effective by the SEC.

While there is no new issue of securities involved in the Proposal under Australian law, under the US federal securities law James Hardie Industries SE is treated as a new registrant and the Explanatory Memorandum constitutes a prospectus for the purposes of US federal securities law. The Explanatory Memorandum is not a prospectus for the purposes of Australia's Corporations Act, 2001. Accordingly, it does not contain all of the information that would be required to be contained in an Australian prospectus and has not been, and will not be, lodged with the ASIC. Investors and security holders of James Hardie are urged to read the Explanatory Memorandum and any amendments, as well as any other relevant documents lodged or filed with the ASX or SEC as they become available because they contain and will contain important information about James Hardie and the Proposal. The Registration Statement, James Hardie's Annual Report on Form 20-F and James Hardie's subsequent reports filed with or furnished to the SEC and other relevant materials (when they become available) may be read and copied at the SEC's public reference room located at 100 F Street, N.E., Washington, D.C. 20549. Information on the operation of the Public Reference Rooms may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains a website, [www.sec.gov](http://www.sec.gov), from which any electronic filings made by James Hardie may be obtained without charge. In addition, investors and security holders may obtain copies of the documents filed with or furnished to the SEC upon oral or written request without charge. Requests may be made by calling the Information Helpline in Australia at 1800 675 021 (between 8.00am and 5.00pm AEST) or elsewhere in the world at +1-949-367-4900 (between 8.00am and 5.00pm US Central Time) or in writing by regular and electronic mail at the following address: James Hardie Industries NV, Atrium, 8th Floor, Strawinskylaan 3077, 1077 ZX Amsterdam, The Netherlands, Attention: Company Secretary; email: [infoline@jameshardie.com](mailto:infoline@jameshardie.com).

All material documents filed with the SEC will also be lodged with the ASX and posted on the James Hardie Investor Relations website ([www.jameshardie.com](http://www.jameshardie.com), select James Hardie Investor Relations).

**Participants in the solicitation**

James Hardie and its executive officers and directors may be deemed to be participants in the solicitation of proxies from the shareholders of James Hardie in connection with the Proposal. Information about the executive officers and directors of James Hardie and their ownership of James Hardie common stock is set out in the Explanatory Memorandum forming part of the Registration Statement.