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

(Amendment No. 2)

BORDEN, INC.
(Name of Subject Company)

BORDEN, INC.
(Name of Person(s) Filing Statement)

Common Stock, Par Value $.625 Per Share
(Title of Class of Securities)

099599102
(CUSIP Number of Class of Securities)

Allan L. Miller, Esq.
Senior Vice President, Chief Administrative Officer
and General Counsel
Borden, Inc.
180 East Broad Street
Columbus, Ohio 43215
(614) 225-4000

(Name, address and telephone number of person
authorized to receive notice and communications on
behalf of the person(s) filing statement)

With a copy to:
Andrew R. Brownstein, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1000

This Amendment No. 2 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 of Borden, Inc., a New Jersey corporation, filed with the Securities and Exchange Commission (the "Commission") on November 22, 1994, as amended by Amendment No. 1 filed with the Commission on December 1, 1994 (as so amended, the "Schedule 14D-9"), with respect to the exchange offer made by Borden Acquisition Corp., a New Jersey corporation (the "Purchaser"), Whitehall Associates, L.P., a Delaware limited partnership (the "Partnership"), and KKR Partners II, L.P., a Delaware limited partnership (together with the Partnership, the "Common Stock Partnerships"), to exchange shares, owned by the Purchaser or its affiliates, of common stock, par value $.01 per share (the "Holdings Common Stock"), of RJR Nabisco Holdings Corp., a Delaware corporation ("Holdings"), for all outstanding Shares

and the associated preferred stock purchase rights (the "Rights"), not already owned by the Purchaser or its affiliates, upon the terms and subject to the conditions set forth in the Offering Circular/Prospectus, dated November 22, 1994, and the related Letter of Transmittal. Under the terms of the Exchange Offer, each Share accepted by the Purchaser in accordance with the Exchange Offer shall be exchanged for that number of fully paid and nonassessable shares of Holdings Common Stock equal to the Exchange Ratio. The term "Exchange Ratio" means the quotient (rounded to the nearest 1/100,000) obtained by dividing (i) $14.25 by (ii) the average of the average of the high and low sales prices of the Holdings Common Stock as reported on the New York Stock Exchange (the "NYSE") Composite Tape on each of the ten full consecutive trading days ending immediately prior to the ten business day period ending on the date of expiration of the Exchange Offer, including any extension thereof (the "Valuation Period"), provided that the Exchange Ratio shall not be less than 1.78125 or greater than 2.375.

Capitalized terms used and not defined herein shall have the meanings assigned such terms in the Schedule 14D-9 as heretofore amended and supplemented.

Item 4. The Solicitation or Recommendation.

(a)-(b) The description in the Schedule 14D-9 under "Background and Reasons for the Board's Recommendation; Opinions of Financial Advisors--Background--Events Subsequent to Announcement of the KKR Transaction" is hereby amended and supplemented by adding the following information:

On December 1, 1994, the Board met and reviewed the letter received from Japonica on November 30, 1994 (the "Japonica November 30 letter"). Following the conclusion of such meeting, on behalf of the Board, a letter was sent to Japonica. This letter advised Japonica that the Board's objective is to maximize the value of the Company for its shareholders and to do so the Board will pursue whatever transaction the Board believes most likely to achieve its objective. The Board's letter also noted that the Japonica November 30, 1994 letter is silent on many important details, given the complex nature of the transactions it describes. Therefore, in view of the time factors involved in the transaction involving the Common Stock Partnerships and the Japonica proposal, the Board requested that Japonica meet with the Board's representatives on Sunday, December 4, 1994, noting that one of the Board's independent directors would chair the meeting on the Board's behalf. The Board's letter stated that the purpose of the meeting will be to obtain detailed information about Japonica's plans in order to assist the Board in its consideration of the proposal set forth in the Japonica November 30 letter. In this connection, the Board's letter requested that Japonica provide the Board with detailed information on a number of questions raised in its review of the Japonica November 30 letter. The Board's letter concluded by requesting confirmation that Japonica would be willing to meet on December 4, 1994, noting that if the date was not convenient for Japonica, the Board will make every effort to schedule something more convenient; the letter also requested that if Japonica was unable to meet on such date, that Japonica provide the Board with a written response to the Board's questions on or before such date. Following the delivery of the Board's letter to Japonica, it was publicly reported that a Japonica spokesman had stated that Japonica would respond to the Board's request as soon as practicable. The Board's letter is included as an exhibit hereto and is incorporated herein by this reference; the foregoing description of such letter is qualified in its entirety by reference to such exhibit.

Item 8. Additional Information to be Furnished.

(b) The description under "Certain Legal Proceedings" is hereby amended and supplemented by adding the following information:

On November 30, 1994, a putative class action captioned Petersen, et al. v. Borden, Inc., et al., Case No. 94 CIV 8648, was filed by purported shareholders of the Company in the United States District for the Southern District of New

York against the Company, members of the Company's board of directors, Holdings, members of Holdings' board of directors, KKR, certain partners and executives of KKR, and the Company's financial advisors, Lazard Freres and First Boston. The complaint alleges, among other things, (1) violations of Sections 14(e) and 20(a) of the Securities Exchange Act of 1934, as amended, by the Company, KKR and the Company's board of directors; (2) violations of Section 11 of the Securities Act of 1933, as amended, by Lazard Freres, First Boston and certain officers and directors of Holdings and partners or executives of KKR; and (3) breach of fiduciary duty by the Company and the Company's board of directors, which breach of fiduciary duty allegedly was aided and abetted by KKR. The complaint seeks equitable relief, including, among other things, a preliminary injunction and declaratory relief, as well as money damages. A copy of the complaint is included as an exhibit hereto and is incorporated herein by reference. In addition, copies of the complaints in other actions filed against the Company and its directors have been included as exhibits to the Schedule 14D-9 and are incorporated herein by reference.

Item 9. Material to be Filed as Exhibits.

The list of exhibits in the Schedule 14D-9 is hereby amended and supplemented by adding the following exhibits:

Exhibit 99.79 --	Letter from F.J. Tasco to P.B. Kazarian, dated December 1, 1994.
Exhibit 99.80 --	Complaint filed in Peterson, et al. v. Borden, Inc., (S.D.N.Y. Nov. 30, 1994).

SIGNATURE

After reasonable inquiry and to the best of its knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

BORDEN, INC.

Dated: December 2, 1994

By: /s/ Allan L. Miller
Name: Allan L. Miller
Title: Senior Vice President, Chief Administrative Officer and General Counsel

EXHIBIT INDEX

Exhibit	Description	Sequential Number
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Exhibit 99.79

[LETTERHEAD OF BORDEN, INC.]

December 1, 1994

Mr. Paul B. Kazarian
Managing Partner
Japonica Partners
30 Kennedy Plaza
Providence, Rhode Island 02903

Dear Mr. Kazarian:

The Board of Directors of Borden, Inc. has reviewed your letter dated November 30, 1994. As I am sure you appreciate, your letter is silent on many important details, given the complex nature of the transactions you describe. As we have advised you previously, our objective is to maximize the value of Borden for its shareholders and to do so we will pursue whatever transaction we believe most likely to achieve our objective.

In view of the time factors involved in the Whitehall transaction and your proposal, we request that you meet with the Board's representatives at 10:00 AM on Sunday, December 4, 1994, at Wachtell, Lipton, Rosen & Katz's offices, at 51 West 52nd Street, 28th floor. Dr. Wilbert J. LeMelle, one of our independent directors, will chair the meeting on our behalf. The purpose of the meeting will be to obtain detailed information about your plans in order to assist the Board in its consideration of your proposal.

In light of the complexity of your proposal, and to make the meeting productive, you should provide us with detailed information as to the following:

- What would happen in the near future to cause all of Borden's shares to be worth $17 under your plan, especially since you do not seem to contemplate injecting new equity into the Company and the Borden common stock will be further burdened by the fixed charges of the preferred stock you propose to issue;

- The basis for and assumptions underlying the earnings per share forecasts of your plan, which, notwithstanding preferred stock charges, are at levels more than double earnings estimates by Borden's management;

- How you would deal with the legal issues of fraudulent conveyance and illegal dividend payments in connection with the spin-offs your proposal entails;

- How you would handle Borden's approximately $2.4 billion of outstanding indebtedness, more than half of which would become prepayable as a result of the split up of the Company you propose;

- The sources of your financing and any material contingencies with respect thereto;

- The dividend rate and other terms (assuming current market conditions) that you think would be necessary to cause the preferred stock you would issue to trade at par; and

- The time period you think necessary to implement the contemplated transactions (including obtaining assurances as to the tax free status thereof) and how you would propose to protect Borden shareholders against possible adverse developments in the interim period.

The foregoing questions are not intended to limit the discussion at the meeting but merely to give you guidance in preparing for the meeting. You are, of course, invited to present whatever other information you wish.

We would like to proceed as expeditiously as practicable given the nature of the task before us, and we have scheduled the meeting accordingly. We look forward to receiving promptly your confirmation that we will meet on Sunday. Please contact Allan Miller at our Columbus office in this regard. If Sunday is not convenient for you, please advise us promptly and we will make every effort to schedule something more convenient. If you cannot meet on Sunday, we request that you provide us with a written response to our questions on or before Sunday.

On behalf of the Board of Directors,

/s/ Frank J. Tasco

Frank J. Tasco
Chairman

Exhibit 99.80

UNITED STATES DISTRICT COURT

Southern District of New York

JAMES PETERSEN, SIDNEY GLICK, BARBARA LUBIN, MARTIN H. OLESH, PAMELA SKULSKY, MARTIN WEBER, NORMAN WEISS, STELLA COHORSKY, ABRAHAM JOSEPH, ROBERT WARING, ROBERT STROUGO, THOMAS TASSONE, MOISE KATZ, CHARLES MILLER, WILLIAM STEINER, PAUL L. KOHNSTAMM, JERRY KRIM, BERNARD STEPAK, DANIEL MARCUS, KATHLEEN DWYER, PITTMAN NEUROSURGICAL P.A. Defined Benefit Plan U.T.D. 9/1/77 and R. Clinton Pittman Trustee, MARGARET ALESSI, JOSEPH RABINOVITS, ESTATE OF HENRY F. WANGER, GEORGE MAZETY, JEFFREY E. KASSOWAY, TERRY STAPLES, ROBERT LEWIS and ERICA HARTMAN,

Plaintiffs,

- against -

BORDEN, INC., ERVIN SHAMES, FRANK J. TASCO, FREDERICK E. HENNIG, WILBERT J. LEMELLE, ROBERT B. LUCIANO, H. BARCLAY MORLEY, JOHN E. SEXTON, PATRICIA CARRY STEWART, RJR NABISCO HOLDINGS CORP., KOHLBERG KRAVIS ROBERTS & CO., L.P., CHARLES M. HARPER, STEPHEN R. WILSON, ROBERT S. ROATH, H. JOHN GREENIAUS, JAMES W. JOHNSTON, JAMES H. GREENE, JR., HENRY R. KRAVIS, PAUL E. RAETHER, LAWRENCE R. RICCIARDI, CLIFTON S. ROBBINS, GEORGE R. ROBERTS, SCOTT M. STUART, MICHAEL T. TOKARZ, JOHN T. CHAIN, JR., JOHN L. CLENDENIN, JOHN G. MEDLIN, JR., ROZANNE L. RIDGWAY, LAZARD FRERES & CO. and CS FIRST BOSTON GROUP, INC.,

Defendants.

SUMMONS IN A CIVIL ACTION

CASE NUMBER
94 CIV 8648

TO: (Name and Address of Defendant)
Borden, Inc.
c/o Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

(see attached list for additional defendants)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon plaintiffs's attorney (name and address)

See attached list.

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk Date

By Deputy Clerk

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1] DATE

NAME OF SERVER TITLE

Check one box below to indicate appropriate method of service:

[ ] Served personally upon the defendant. Place where served:

[ ] Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left:

[ ] Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL SERVICES TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Retun of Service and Statement of Service Fees is true and correct.

Executed on
Date Signature of Server

Address of Server

---

1 As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure

DEFENDANTS' ADDRESSES

Borden, Inc.
c/o Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1000
(212) 403-2000

ERVIN SHAMES
FRANK J. TASCO
FREDERICK E. HENNIG
WILBERT J. LEMELLE
ROBERT B. LUCIANO
H. BARCLAY MORLEY
JOHN E. SEXTON
PATRICIA CARRY STEWART
c/o Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
(212) 403-1000
(212) 403-2000

RJR NABISCO HOLDINGS CORP.
1301 Avenue of the Americas
New York, New York.

CHARLES M. HARPER
STEPHEN R. WILSON
ROBERT S. ROATH
H. JOHN GREENIAUS
JAMES W. JOHNSTON
JAMES H. GREENE, JR.
HENRY R. KRAVIS
PAUL E. RAETHER
LAWRENCE R. RICCIARDI
CLIFTON S. ROBBINS
GEORGE R. ROBERTS
SCOTT M. STUART
MICHAEL T. TOKARZ
JOHN T. CHAIN, JR.
JOHN L. CLENDENIN
JOHN G. MEDLIN, JR.
ROZANNE L. RIDGWAY
c/o RJR NABISCO HOLDINGS CORP.
1301 Avenue of the Americas
New York, New York.

KOHLBERG KRAVIS ROBERTS & CO. L.P.
c/o Simpson Thacher & Bartlett
425 Lexington Avenue
New York, New York 10017

Lazard Freres
1 Rockefeller Plaza
New York, New York
(212) 632-6000
Legal Department
31st Floor

CS FIRST BOSTON GROUP INC.
55 East 52nd Street
New York, New York 10022

PLAINTIFF(S) ADDRESS(ES)

JAMES PETERSEN
SIDNEY GLICK
BARBARA LUBIN
MARTIN H. OLESH
PAMELA SKULSKY
MARTIN WEBER
NORMAN WEISS
STELLA COHORSKY
ABRAHAM JOSEPH
ROBERT WARING
ROBERT STROUGO
THOMAS TASSONE
MOISE KATZ
CHARLES MILLER
WILLIAM STEINER
PAUL L. KOHNSTAMM
JERRY KRIM
BERNARD STEPAK
DANIEL MARCUS
KATHLEEN DWYER
PITTMAN NEUROSURGICAL P.A.
Defined Benefit Plan U.T.D. 9/1/77
and R. Clinton Pittman Trustee
MARGARET ALESSI
JOSEPH RABINOVITS
ESTATE OF HENRY F. WANGER
GEORGE MAZETY
JEFFREY E. KASSOWAY
TERRY STAPLES
ROBERT LEWIS and ERICA HARTMAN
c/o ABBEY & ELLIS
212 East 39th Street
New York, New York 10016
(212) 889-3700

New York County

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES PETERSEN, SIDNEY GLICK, BARBARA LUBIN, MARTIN H. OLESH, PAMELA SKULSKY, MARTIN WEBER, NORMAN WEISS, STELLA COHORSKY, ABRAHAM JOSEPH, ROBERT WARING, ROBERT STROUGO, THOMAS TASSONE, MOISE KATZ, CHARLES MILLER, WILLIAM STEINER, PAUL L. KOHNSTAMM, JERRY KRIM, BERNARD STEPAK, DANIEL MARCUS, KATHLEEN DWYER, PITTMAN NEUROSURGICAL P.A. Defined Benefit Plan U.T.D. 9/1/77 and R. Clinton Pittman Trustee, MARGARET ALESSI, JOSEPH RABINOVITS, ESTATE OF HENRY F. WANGER, GEORGE MAZETY, JEFFREY E. KASSOWAY, TERRY STAPLES, ROBERT LEWIS and ERICA HARTMAN,	CLASS ACTION COMPLAINT Civil Action No. JURY DEMAND

Plaintiffs,

- against -

BORDEN, INC., ERVIN SHAMES, FRANK J. TASCO, FREDERICK E. HENNIG, WILBERT J. LEMELLE, ROBERT B. LUCIANO, H. BARCLAY MORLEY, JOHN E. SEXTON, PATRICIA CARRY STEWART, RJR NABISCO HOLDINGS CORP., KOHLBERG KRAVIS ROBERTS & CO., L.P., CHARLES M. HARPER, STEPHEN R. WILSON, ROBERT S. ROATH, H. JOHN GREENIAUS, JAMES W. JOHNSTON, JAMES H. GREENE, JR., HENRY R. KRAVIS, PAUL E. RAETHER, LAWRENCE R. RICCIARDI, CLIFTON S. ROBBINS, GEORGE R. ROBERTS, SCOTT M. STUART, MICHAEL T. TOKARZ, JOHN T. CHAIN, JR., JOHN L. CLENDENIN, JOHN G. MEDLIN, JR., ROZANNE L. RIDGWAY, LAZARD FRERES & CO. and CS FIRST BOSTON GROUP, INC.,

Defendants.

Plaintiffs and all others similarly situated, by and through their attorneys, allege upon personal knowledge as to allegations concerning themselves and upon information and belief as to all other matters as follows:

1. This class action is brought by plaintiffs, shareholders of defendant Borden, Inc. ("Borden" or the "Company") for declaratory and injunctive relief, or, alternatively, for monetary damages resulting from the individual defendants' repeated breaches of the disclosure and fiduciary duties owed by them, as directors of Borden, to plaintiffs, and defendants Kohlberg Kravis Roberts & Co., L.P.'s ("KKR"), RJR Nabisco Holdings Corp. ("RJR"), Lazard Freres & Co. ("Lazard") and CS First Boston ("First Boston") knowing direct participation in and aiding and abetting of those breaches. The breaches occurred, and are continuing, in connection with directors' decision to sell Borden and their abject failure to carry out their fiduciary and disclosure duties to Borden shareholders in the many respects hereinafter described.

SUMMARY OF THE COMPLAINT

2. Contrary to what the defendants are telling the world about KKR's offer to pay $14.25 for every Borden share -- that it is a "premium of 22.6 percent" and that it is the "best available alternative for Borden shareholders" -- the merger agreement signed by Borden and KKR, in truth, does nothing more

than force Borden shareholders to pay KKR $65 million for the privilege of assuming one half of KKR's tobacco liability in exchange for selling their company on the cheap. Remarkably for 1994, KKR, in true 1980s style, has conceived and executed the first win/win tender offer. If the offer is successful, and KKR obtains the tender of over 50% of the outstanding shares of Borden, KKR earns $65 million and owns Borden. If the offer is unsuccessful, and KKR receives less than 50% in the tender offer, KKR earns $65 million and obtains effective control of Borden by virtue of a 19.9% stock option and the 16% of Borden KKR already owns. The offer is even more diabolical in concealing the true nature of the "back end" the Borden shareholders will receive following the merger. While a "collar" protects the value of the securities to be received by tendering shareholders, no such collar protects those Borden shareholders who do not tender. Once the merger is consummated, non-tendering shareholders will receive "the same number" of RJR shares offered in the exchange, but the value of those shares is likely to be diminished as a result of both the dilutive entry of millions of new, freely tradeable, RJR shares into the marketplace, as well as the price depression in RJR stock which will follow the sale of many of those newly tradeable shares by former Borden shareholders who do not wish to be shareholders of RJR.

2. With the willing collusion of the majority of the Borden board of directors, KKR has obtained an agreement that allows it to gain control of Borden at a discount to the true value of the corporation win, lose, or draw -- and receive $65 million for their trouble. In fact, the entire deal is nothing more than a mosaic of violations of the federal securities laws and breaches of fiduciary duty.

3. The public filings of Borden and KKR failed to properly disclose:

(a) that while non-tendering Borden shareholders will receive the same number of RJR shares as those received by tendering shareholders in the exchange offer, the value of those shares is likely to be materially less. Borden's sole disclosure on this issue states that "non-tendering shareholders will receive the same consideration for each Borden share as was paid in the exchange offer." (emphasis added) This statement is materially misleading because the value is likely to be less than the value of the shares received in the exchange.

(b) that in evaluating whether the KKR proposal was the best alternative for the company, the Board did not take into account the results of the third quarter of 1994 -- the first up quarter in three years;

(c) the full details of why the executive in charge of the Company and its restructuring refused to agree to the KKR offer and abstained from all voting on the merger;

(d) the fact that KKR need only obtain the tender of a mere 25% of Borden shares in order to reach the "Minimum Condition" of the offer;

(e) the fact that if RJR stock drops by as little as 1/2 a point between November 22, and the undetermined date upon which the exchange ratio will be set, Borden stockholders will receive not $14.25 per share, but materially less -- and how much less is simply the product of how low RJR stock goes, and how long the offer stays open;

(f) the fact that the value of the consideration to be received by Borden pursuant to the Stock Option is considerably less than the $300 million face value of the RJR stock;

(g) that another bona fide bidder had made a proposal for the company at significantly more per share than the KKR bid;

(h) that Lazard and First Boston are in fact acting as underwriters for this largest secondary offering in history, and being compensated as such;

(i) that the consideration to be received by the Borden shareholders in the offer is subject to enormous, quantifiable risk as a result of the tobacco component of RJR's business;

(j) that RJR's spin-off of 17% to 19% of its food business in an initial public offering and the subsequent absolute right of RJR to sell off the remaining 80% of that business leaves tendering Borden shareholders with the risk that they may be trading their shares in a pre-eminent food business for shares in a tobacco business; and,

(k) the full details of why RJR terminated the agreement in principle relating to the Borden tender offer, signed by RJR and KKR.

4. The Borden board has breached its fiduciary duties to the stockholders by agreeing to a merger with KKR:

(a) while knowing of the interest of other qualified and bona fide bidders for Borden, and without taking any steps to inform themselves as to the actual amount that such interested parties were willing to pay for Borden;

(b) without taking steps to inform themselves as to the true value of Borden in a fair auction or other process and thereby agreeing to sell the company for a price

which was at least more than $1.75 per share less than its true value as measured against the bottom of the range of value offered by a competing bidder;

(c) by entering into a merger agreement which contains provisions designed not only to thwart, impede, delay, and/or make prohibitively expensive bona fide competing bids for Borden, but also to guarantee a "concentration of influence" and "significant influence" over Borden by KKR, including:

(i) A lock up stock option (the "Stock Option"), which allows KKR to purchase 19.9% of Borden's outstanding common stock (approximately 28,138,000 shares) at the favorable price of $11 per share, payable in RJR stock, and permits KKR to obtain over 33% of Borden's board seats if the KKR offer is unsuccessful; and,

(ii) A disproportionate number of success fees and "topping fees" which, in the aggregate, amount to no less than $65 million -- $20 million of which has already been paid to KKR.

(d) where the sole consideration to be paid to Borden shareholders consists of shares of RJR which the directors knew was in danger of severe decline due to (i)

the inherent risk of RJR's tobacco holdings; (ii) the recent announcement of RJR's public offering of 17% - 20% of its non-tobacco assets and the absolute right of RJR to dispose of the remaining 80%; and, (iii) the dilutive effect of the entry into the market of at least 109 million and at most 354 million shares of freely tradable RJR common shares;

(e) refusing to obtain an expert opinion on the risks inherent in tobacco liability and the effect such liability might have on the consideration to be received by the Borden stockholders;

(f) refusing to and failing to meet, discuss, or negotiate in good faith with known and identified bona fide competing bidders for Borden who were willing to offer, and did offer, to Borden and its stockholders financial consideration and other terms which were substantially better than those offered by KKR;

(g) without taking steps to inform themselves in any manner whatsoever whether Japonica Partners ("Japonica"), was willing to pay more for Borden than KKR; and,

(h) making materially false and misleading statements to Borden's shareholders with respect to the sale of Borden to KKR.

5. Each of the Borden Director Defendants in their actions and inaction were acting under the domination of Borden's existing management, whose sole motivation is to deliver Borden to KKR in order to enrich themselves and secure continuing employment with the merged entity.

THE JURISDICTION AND PARTIES

6. This is a class action which arises under Section 14(e) of the Securities Exchange Act of 1934 ("1934 Act"), 15 U.S.C. 78n(e), Section 11 of the Securities Act of 1933 (the "1933 Act"), 15 U.S.C. Paras. 77k and applicable principles of common law. This Court has jurisdiction pursuant to Section 27 of the 1934 Act, Section 22 of the 1933 Act, 28 U.S.C. Para. 1331, and principles of supplemental jurisdiction.

7. Venue is proper in this district pursuant to Section 27 of the Exchange Act, 15 U.S.C. Sec. 78aa, and 288 U.S.C. Secs. 1391(b) and (c). A substantial part of the events giving rise to the claims alleged herein occurred in this district, including the dissemination of false and misleading statements in connection with the tender offer for Borden.

8. In connection with the acts and conduct alleged in this complaint, defendants, directly and indirectly, used

the means and instrumentalities of interstate commerce, including the mails and telephone communication, and the facilities of the national securities markets, namely, the New York Stock Exchange.

9. Plaintiffs herein are, and at all times relevant to this action have been, owners of the shares of the common stock of defendant Borden.

10. Defendant Borden is a New Jersey corporation maintaining its principal place of business at 180 East Broad Street, Columbus, Ohio 43215. Borden is engaged primarily in manufacturing, processing, purchasing and distributing a broad range of products, including a variety of consumer food products, consumer and industrial adhesives, and plastic films and packaging.

11. The following defendants are, and at all times relevant hereto, have been directors and officers of Borden (collectively, the "Director Defendants").

12. Defendant Ervin Shames ("Shames") is, and at all relevant times hereto has been, a director of Borden, and its President and Chief Executive Officer.

13. Defendant Frank J. Tasco ("Tasco") is, and at all times relevant hereto has been, Chairman of the Board of Borden.

14. Defendants Frederick E. Hennig ("Hennig"), Wilbert J. Lemelle ("Lemelle"), Robert P. Luciano ("Luciano"), H. Barclay Morley ("Morley"), John E. Sexton ("Sexton") and Patricia Carry Stewart ("Stewart") are, and at all times relevant hereto have been, directors of Borden.

15. Defendant RJR is a Delaware corporation with its principal place of business located at 1301 Avenue of the Americas, New York, New York. RJR, through its wholly owned subsidiary RJR Nabisco, Inc., is a global leader in the food and tobacco industries.

16. Defendant KKR is a Delaware limited partnership with its principal offices located at 9 West 57th Street, New York, New York 10019. KKR is a "buyout firm" that owns a substantial interest in, among others, RJR. According to an April 11, 1994 proxy statement of RJR, KKR, through its affiliate KKR Associates, owns 566,766,236 shares or 48.9% of the RJR common stock outstanding. An affiliate of KKR, Whitehall Associates, L.P., is the owner of Borden Acquisition Corp., the offeror in the KKR tender offer. Whitehall Associates is the beneficial owner of 16% of the outstanding common stock of Borden.

17. The following defendants are officers and/or directors of RJR and/or general or limited partners or executives of KKR (collectively, the "KKR Defendants").

18. Defendant Charles M. Harper ("Harper") is, and at all times relevant hereto has been, an RJR director, and is its Chief Executive Officer and Chairman of the Board.

19. Defendant Stephen R. Wilson ("Wilson") is, and at all times relevant hereto has been, Executive Vice President and Chief Financial Officer of RJR.

20. Defendant Robert S. Roath ("Roath") is, and at all times relevant hereto has been, Senior Vice President and Controller of RJR.

21. Defendant H. John Greeniaus ("Greeniaus") is, and at all times relevant hereto has been, a director of RJR and is the Chairman and Chief Executive Officer of Nabisco Foods Group.

22. Defendant James W. Johnston ("Johnston") is a director of RJR and has served, at all times relevant hereto, as Chairman and Chief Executive Officer of R.J. Reynolds Tobacco Company.

23. Defendant James H. Greene, Jr. ("Greene") is, and at all times relevant hereto has been, a director of RJR, and a general partner of KKR and affiliated companies.

24. Defendant Henry R. Kravis ("Kravis") is, and at all times relevant hereto has been, a director of RJR and a general partner of KKR and affiliated companies.

25. Defendant Paul E. Raether ("Raether") is, and at all times relevant hereto has been, a director of RJR and a general partner of KKR and affiliated companies.

26. Defendant Lawrence R. Ricciardi ("Ricciardi") is, and at all times relevant hereto has been, a director of RJR and its President and General Counsel.

27. Defendant Clifton S. Robbins ("Robbins") is, and at all times relevant hereto has been, a director of RJR and an executive of KKR and a limited partner of a KKR affiliate.

28. Defendant George R. Roberts ("Roberts") is, and at all times relevant hereto has been, a director of RJR and a general partner of KKR and a KKR affiliate.

29. Defendant Scott M. Stuart ("Stuart") is, and at all times relevant hereto has been, a director of RJR and an executive of KKR and a limited partner of a KKR affiliate.

30. Defendant Michael T. Tokarz ("Tokarz") is, and at all times relevant hereto has been, a director of RJR and a general partner of KKR and a KKR affiliate.

31. Defendants John T. Chain, Jr. ("Chain"), John L. Clendenin ("Clendenin"), John G. Medlin, Jr. ("Medlin") and Rozanne L. Ridgway ("Ridgway") are and at all times relevant hereto have been directors of RJR.

32. Defendant Lazard is engaged in the business of, among other things, investment banking and the rendering of expert advice with respect to mergers and acquisitions. Beginning in October, 1993, Lazard advised Borden with respect to the consideration of certain transactions, including the proposed Exchange Offer and Merger Agreement. Lazard acted as an "underwriter" within the meaning of Section 11 of the 1933 Act in connection with the Exchange Offer.

33. Defendant First Boston is a Delaware corporation with its principal executive offices located at Park Avenue Plaza, New York, New York 10055. First Boston, through its wholly owned subsidiaries, is engaged in, among other things, investment banking and the rendering of expert advice with respect to mergers and acquisitions. Beginning in September, 1993, First Boston provided financial advice to Borden in connection with certain proposed transactions, including the proposed Exchange Offer and Merger Agreement. First Boston

acted as an "underwriter" within the meaning of Section 11 of the 1933 Act in connection with the Exchange Offer.

CLASS ACTION ALLEGATIONS

34. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of all common stockholders of Borden (except defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any of the defendants and except for all persons seeking to buy Borden as an entity, either by friendly or hostile means) who are being deprived of the opportunity to maximize the value of their Borden stock by the wrongful acts of the defendants described herein (the "Class").

35. This action is properly maintainable as a class action for the following reasons:

a. The Class is so numerous that joinder of all members is impracticable. There are approximately 141,814,967 shares of Borden common stock outstanding owned by approximately 37,946 shareholders of record. The members of the Class are scattered throughout the United States and are so numerous as to make it impracticable to bring them all before this Court.

b. No unusual difficulties are likely to be encountered in the management of this Class Action. The likelihood of individual Class members prosecuting separate claims is remote.

c. There are questions of law and fact which are common to the Class and which predominate over the questions affecting any individual Class member, including whether the defendants have breached the fiduciary duties owed by them to plaintiffs and members of the Class and the duties of disclosure mandated by the federal securities laws by reason of:

(i) disseminating or permitting the dissemination of public false and misleading statements concerning the sale of the Company to KKR; and,

(ii) whether defendants' acts violate the Securities Act of 1933 and the Securities and Exchange Act of 1934 and the rules and regulations promulgated thereunder;

(iii) engaging in plans and schemes to unlawfully thwart offers and proposals from third parties;

(iv) approving and causing Borden to approve and agree to onerous "lock up" provisions with KKR without any reasonable basis;

(v) failing to adequately inform themselves prior to entering into a merger agreement with KKR;

(vi) failing to conduct an auction of the Company in order to maximize shareholder value; and

(vii) whether plaintiffs and the other members of the Class will be irreparably damaged were the transactions contemplated of herein consummated.

d. Plaintiffs are committed to prosecuting this action and have retained competent counsel experienced in litigation of this nature. The claims of plaintiffs are typical of the claims of the other members of the Class and plaintiffs have the same interests as the other members of the Class. Plaintiffs are adequate representatives of the Class.

e. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudication with respect to individual members of the Class which would establish incompatible standards of conduct for the parties opposing the Class.

f. Defendants have acted and are about to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or corresponding rescissory relief with respect to the Class as a whole.

36. For the reasons stated herein, a Class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein.

SUBSTANTIVE ALLEGATIONS

Background

37. Borden is a Fortune 500 company whose main emphasis is the food business. Borden's food assets include snacks, jams and jellies, pasta, dairy (including cheese) and seafood. Through its Packaging and Industrial Products Division Borden produces wallcoverings and packaging. In addition, Borden has a large adhesive and resin business. The largest division, and that for which Borden is best known, is the dairy business. Between 1989 and 1992 Borden made numerous acquisitions and saw its debt load rise while its earnings and stock price fell. In September, 1993, Borden shares traded at $19.875, a twelve month high. Prior to that, Borden's share price had been in the $30 range.

Initial Overtures by KKR

38. In early 1993, at a time when Borden was reevaluating its goals under a restructuring plan instituted in 1992, Borden received an unsolicited expression of interest from KKR. Borden, having struggled for years to overcome declining earnings and falling sales through various failed restructuring plans, decided to enter into discussions with KKR, at the initiation of KKR, in order to determine whether a sale of the Company was a suitable alternative to restructuring. Representatives of KKR met with management of the Company and the Company's financial advisor, First Boston. Prior to that meeting KKR neither signed a confidentiality agreement, nor proffered evidence of firm financing. Following those discussions, Borden informed KKR that it did not wish to proceed with a sale of the Company. The Borden board had apparently concluded to continue to try to revive the Company, and remain independent. Despite the termination of those discussions, KKR remained interested in acquiring Borden.

The 1993 Restructuring Plan

39. Having decided to forego a sale of the company, the Borden board decided to replace management and pursue a more vigorous restructuring. To that end, the Company hired Ervin Shames as President and Chief Operating Officer in June 1993. Shames was hired for his expertise in the food business

and given the mandate to review the assets of the Company and identify which assets to retain and which to divest in an effort to restructure the Company. To assist Mr. Shames, the Company hired the consulting firm of Booz Allen & Hamilton, Inc. ("Booz Allen") and the investment bank, First Boston. Borden also retained the law firm of Wachtell, Lipton, Rosen & Katz as special counsel to the Company and retained Lazard, to help the Company analyze its "strategic alternatives."

40. In the fall of 1993, Mr Shames and his advisors presented the Borden board with a new plan for restructuring the Company. The plan called for major divestitures, including the sale of the North American snacks business, its seafood business, its jams and jellies business, and other businesses which, in the aggregate, amounted to approximately 20% of the Company's projected sales for 1993.

The Board Hedges Its Bets

41. Despite having been told by the Company that it was not interested in a transaction with KKR, KKR continued to express an interest in acquiring Borden throughout 1993, and was even able to obtain non-public information about the 1993 restructuring plan. In December 1993, the Borden board, aware that two unsolicited inquiries regarding the sale of the company had been received, one from KKR and one from Hanson PLC ("Hanson"), instructed Lazard to make limited inquiries of

potential buyers, including KKR. KKR, together with Lazard, then brought the possibility of a transaction with Borden to the attention of RJR, a company controlled by KKR. The talks with RJR did not however, produce a proposed transaction. Just as in the earlier discussion, no confidentiality agreement was signed, nor was evidence of financing proffered before substantive meetings were held.

42. On December 9, 1993, Lazard informed the board that Hanson had surfaced and was interested in acquiring all of the Company. At a board meeting, the board decided to continue the 1993 restructuring plan as its primary goal, but also to pursue discussions with Hanson. Those discussions resulted in a proposal for Hanson to acquire the Company's Packaging and Industrial Products Division and make a concurrent investment in the remaining food businesses. The board rejected this proposal and in January of 1994, the board approved the 1993 restructuring plan. Despite early problems reaching the goals set by the 1993 plan through the first half of 1994, in the third quarter of 1994 Borden reported its first positive results in three years, with sales rising by 3.9%. During the course of implementing the 1993 restructuring plan, but prior to the results for the third quarter, the board decided to revisit the idea of selling the Company as an alterative to seeing the restructuring through.

Borden Is Up For Sale

43. On May 24, 1994, in response to public disclosures that Borden might be up for sale, Japonica Partners ("Japonica"), a company headed by former a Goldman Sachs investment banker, Paul Kazarian ("Kazarian"), wrote to Borden and expressed an interest in entering into a transaction with the Company and seeking a meeting to discuss the possible transaction. Kazarian, the former chairman of Sunbeam-Oster, Inc., which was acquired by Kazarian with some $660 million in financing, is a well known turnaround expert. Kazarian recently turned around the consumer products company, Allegheny International. Kazarian's May 24 letter, and subsequent letters, went unanswered. It was not, in fact, until the middle of June, that Borden responded to Kazarian's letters, and informed him that his attention should be directed to Lazard. Japonica attempted to reach Lazard and after some time during which its calls were not returned, Japonica's overtures were rebuffed.

44. On July 5, 1994, Kazarian wrote to Tasco, the Chairman of Borden, expressing continued interest in making a proposal and relaying Lazard's less than up-beat appraisal of the Company's situation. That letter, as well, went unanswered. Lazard and Tasco continued to refuse to have substantive discussions with Japonica and took the position

that Japonica was avoiding answering questions regarding the proposed source of funds for the transaction Japonica was proposing. Japonica, for its part, denied that any questions relating to financing were posed by Lazard, and continued to seek a meeting to discuss its proposal.

45. On July 26, the Borden board met and instructed Lazard to pursue discussions with KKR. The board did not consider pursuing discussions with Japonica, nor did it consider seeking proposals from any other party, including the previous potential purchaser, Hanson. The board concluded that "given the publicity concerning the Company's efforts to find a buyer in late 1993 and the lack of inquiries, the Board determined that it was reasonable to conclude that no other bidder was interested." Thus, the board relied solely on the negative results of a limited, 6 month long, market canvass as the basis for pursuing discussions with only their suitor of choice -- KKR. Indeed, at the time of the 1993 market check, the stock of Borden was trading in the high twenties, ten points higher than July -- making Borden a more attractive target in July 1994 than in December of 1993.

46. On July 27, 1994, the Company announced its results for the second quarter of 1994. Net income continued to decline, to $.08 per share, compared to $.22 per share in the same period of 1993. Net sales, however, rose 1.3% against

the same comparable period one year earlier. The results were, however, below the expectations set in the 1993 restructuring plan and caused the Company to reconsider, once again, its restructuring goals. In order to further its restructuring plans, the Company obtained a $1.4 billion, 2 1/2 year financing facility from a syndicate of banks lead by Citibank and Credit Suisse. The Company also began to develop a new 1994 restructuring plan which called for a divestiture of the majority of the dairy business, the main drain on the Company's earnings and cash, as well as the sale of two profitable assets of the Packaging and Industrial Products Division in order to generate cash to reduce debt. Working with its advisors, the board authorized management to finalize the details of the proposed 1994 plan with a view toward its formal approval in early September 1994.

Borden Rebuffs Japonica and Embraces KKR

47. Aware of the news regarding the latest restructuring plan, Japonica continued to seek a meeting with Borden. Its overtures were again met with silence from Borden. Notwithstanding Borden's continued refusal to meet with Japonica, on August 3, 1994, a confidentiality agreement was signed with KKR pursuant to which KKR was provided with nonpublic information concerning the Company, including projections. KKR then proposed exploring a transaction with

Borden, the consideration for which would be securities owned by partnerships controlled by KKR. On August 16, KKR, through Lazard, communicated to Borden a proposal to acquire Borden using KKR controlled RJR stock as the consideration. On August 18, the board was informed at a formal meeting that KKR would require further due diligence before it could proffer a definitive proposal.

48. Over the objections of Shames, the board determined to shift its emphasis from the restructuring to the pursuit of a premium transaction with KKR. Shames stressed that the 1994 plan was achievable and would, in the long run, maximize shareholder value and, in the event the board chose to sell, make the Company more saleable. Management was directed to complete the plans for the new restructuring, but Lazard was directed to pursue a transaction with KKR. The board never directed Lazard to enter into substantive discussions with Japonica to evaluate whether a higher offer could be obtained in that transaction, nor was Japonica allowed access to nonpublic information concerning the Company.

49. On September 7, the board met once again and was informed of the state of negotiations with KKR. KKR agreed to offer $14.25 of RJR stock per Borden share and agreed on a collar, whereby the shareholders of Borden would reap the benefit if RJR stock rose about $8 per share and would bear the

burden if the stock fell below $6 per share. The likelihood of RJR stock reaching the upside of the collar was, however, remote as RJR had not traded in this range in 1994, and in fact traded near or below $6 throughout 1994. KKR also agreed not to profit from the 19.9% stock option in the event a topping bid was made by a third party. KKR, however, insisted on receiving a $20 million up front "fee," a topping fee of $50 million, and expense reimbursement of up to $15 million. Once again Shames stated his belief that the restructuring plan was the best alternative for the Company. Over Shames objections, the board voted to allow management to proceed with the KKR negotiations.

50. On September 11, 1994, the board authorized the Company to enter into an agreement in principle with KKR. The agreement called for KKR to exchange RJR stock worth $14.25 for each share of Borden stock so long as RJR stock trades between $6 and $8 per share. The agreement also called for the immediate payment of a $20 million fee to KKR, a 19.9% stock option at $11 per share, payable in RJR stock and a $50 million topping fee. The agreement was announced on September 12. At the same time, RJR announced that following KKR's successful acquisition of Borden, RJR would issue Borden $500 million of newly issued common shares in exchange for newly issued Borden common shares representing a 20% interest in Borden and a warrant to acquire an additional 10% of Borden shares. The RJR

minority interest was an integral part of the transaction agreed to by the Borden board.

51. In the face of these announcements, Japonica continued to write to Borden and attempted obtain information and a substantive meeting. In response to Japonica's repeated requests, the Company finally forwarded a form confidentiality agreement for Japonica's signature and on September 17, Borden finally relented and agreed to a meeting with Japonica on September 21. At that meeting, and by letter, Japonica proposed paying between $16 and $18 per share in a combination of cash and securities. Japonica went on to outline its past abilities to arrange financing in transactions of comparable size and gave assurances that such could be arranged in the present transaction. Unbeknownst to Japonica, Lazard, with whom Japonica was meeting, had shortly before entered into a new fee arrangement with Borden, whereby Lazard would receive $3 million in fees upon the execution of the Merger Agreement with KKR and an additional $7 million in fees in the event that KKR acquired at least 50.1% of the outstanding shares of Borden. First Boston entered into an identical agreement on September 22. Thus, the investment bankers had no incentive whatsoever to present a bona fide proposal by Japonica to the Borden board. Indeed, these fees, far from being the usual "success fees" paid to financial advisors for producing a premium transaction, are, in fact, underwriting fees -- paid to

Lazard and First Boston in exchange for bringing KKR's secondary offering to market through the Borden shareholders.

Borden Accepts KKR's Offer

52. On September 22, the board met and considered the merger agreement (the "Merger Agreement") and the Conditional Purchase/Option Agreement (the "Option Agreement"). Once again, with Shames abstaining, the board voted in favor of the KKR transaction and on September 23, a joint press release was issued detailing the Merger Agreement and the Option Agreement. The Director Defendants approved the Merger Agreement after only limited deliberation and consideration during part of a single day, and without seeking information concerning any other offers, even though they knew that other bona fide offerors, such as Japonica, existed and were interested in acquiring Borden.

53. The consideration to be received by Borden's shareholders and agreed to by the Director Defendants was grossly inadequate in that it was only slightly more than the nine-year low for the price of Borden shares. Under the terms of the Merger Agreement, the consideration will be common stock of RJR valued at $14.25 provided that no more than 2.375 RJR shares and no fewer than 1.78125 RJR shares will be exchanged for each Borden share. Thus, although the consideration purportedly has an imputed value of $14.25, if RJR stock falls

below $6 per share, the Borden shares will be exchanged for less than that amount. Most important, the Merger Agreement does not require termination of the transaction if the price of the RJR stock falls below this collar.

54. In accepting this price for Borden shares, the board failed to make any inquiry into what the value of the RJR stock to be received by the Borden shareholders would be at the time the shareholders actually receive it. The board failed to ask its advisors to render an opinion as to the effect of the entry into the freely tradable market for those shares of no less than 109 million to 145 million RJR shares as a consequence of the exchange offer. In addition, the board failed to evaluate the risk of liability stemming from RJR's tobacco interests. The Board did not require the two financial advisors to opine on such risk -- indeed, the board accepted the excuses of Lazard and First Boston that their expertise did not extend into that area. Moreover, the board did not retain an advisor whose expertise would allow such expert to opine on the risk of tobacco liability and its potential effect on the consideration to be received by Borden shareholders.

55. The Merger Agreement also contains other material terms which disadvantage Borden's shareholders and were intended to thwart and impede any other competing bid: (i) the payment of a $20 million fee, in cash, to KKR upon

execution of the letter of intent; (ii) the guarantee of reimbursement of expenses up to $15 million; (iii) the payment of a $50 million topping fee; and (iv) the payment of an additional $30 million fee, in cash, in the event that KKR acquires over 50% of the outstanding shares of Borden.

56. In addition, the Merger Agreement coerces the Borden shareholders to tender into the offer in order to avoid losing value on the "back-end" of the transaction. In a variation of the classic "coercive two-tier tender offer", which offers cash on the front end and securities of indeterminate value on the back-end (after the merger has been consummated) and thus compels shareholders to rush to tender in order to get the "certain" consideration, here, the Borden shares of non-tendering (back-end) shareholders will "be converted into the right to receive that number of fully paid, and non-assessable shares of [RJR] common stock equal to the final exchange ratio" as set in the exchange offer. The coercive element is that while a "collar" protects the value of the securities to be received by tendering shareholders, no such collar protects those Borden shareholders who do not tender. Once the merger is consummated, non-tendering shareholders will merely receive "the same number" of RJR shares offered in the exchange, but the value of those shares is likely to be diminished as a result of both of the dilutive entry of millions of new, freely tradeable, RJR shares into the

marketplace, as well as the price depression in RJR stock which will follow the sale of many of those newly tradeable shares by former Borden shareholders who do not wish to be shareholders of RJR. The prospect of losing value in this way will serve to compel Borden shareholders to tender into the exchange offer.

57. The Stock Option Agreement also contains material terms which disadvantage Borden shareholders in the event that the Merger is not consummated. These terms like the aforementioned, are designed to coerce Borden shareholders into tendering into the offer. If the Merger is not consummated, KKR will control, in addition to the shares of Borden already owned, the number of shares acquired in the exchange offer and the option shares pursuant to the Stock Option Agreement by which Borden has granted to KKR the irrevocable right to purchase 19.9% of the outstanding shares of Borden at $11 per share, payable in RJR stock. Despite the statements by the defendants that the option payment would give Borden $300 million in liquid assets, which could be used to pay down debt -- the real value of the RJR stock will be far less. The underwriting fees alone required to bring the stock to market would depress the price far below that level, even without taking into account the dilutive effect of the entry into the market of that amount of freely tradable RJR stock.

58. Indeed, the Option becomes mandatory in the event that KKR acquires more than 41% of Borden shares (including the 16% of Borden shares already owned by KKR) but less than 50%. In addition, Borden has agreed that in the event KKR acquires no less than 19.9% of the outstanding shares of Borden, KKR has the right to control 33 1/3% of the seats on the Borden board. The net effect of the Stock Option Agreement is thus to allow KKR to obtain virtual control of Borden even if it acquires not one share in the exchange offer, and absolute control if a mere 25% of Borden shareholders tender into the offer. The coercive effect of the Option is therefore manifest -- with 16% of Borden shares in hand, and an additional 19.9% guaranteed to it, KKR need only obtain that 25% to insure complete control of Borden. The Borden board has contracted away control of the Company in favor of KKR no matter what -- a virtual majority squeeze-out. In the face of these devices (which were designed and intended to lock up the deal in favor of the board's favored suitor) Japonica has thus far been deterred from making a competing offer for the Company.

Post Agreement Events

59. On October 25, RJR announced that its was unable to reach a definitive agreement with KKR regarding a minority position in Borden, ostensibly over "certain accounting

issues." Coincidentally, a mere three days later, RJR announced that its Nabisco subsidiary was selling 51 million shares of its Class A common stock in an Initial Public Offering amounting to between 17.4% and 19.5% of Nabisco's common equity, with the remaining equity interest residing in the Class B common stock which will be retained by RJR. Borden was informed of Nabisco's intentions prior to the announcement and the filing of the registration statement. As part of the registration statement, Nabisco has stated that RJR "has informed Nabisco that its current intent is to continue to hold all of the Class B common stock . . . However, [RJR] has no agreement with Nabisco not to sell or distribute such shares, and there can be no assurance concerning the period of time during which [RJR] will maintain its beneficial ownership of Common Stock."

60. This development exposes Borden shareholders to the very real risk that RJR will, in future, sell the remainder of its Nabisco holdings, fully separating the tobacco interests of RJR from the food interests of Nabisco. To Borden's shareholders, this means that they are being coerced into accepting a security in a combined food and tobacco business, which could in the very near future become a security in an exclusively tobacco business -- with all the risks that entails - a fact which was has not been disclosed by the defendants.

61. Neither the Borden board, nor its advisors, analyzed the effect of the Nabisco spin-off and the failure of KKR to secure RJR as a minority owner of the merged company. These two events are likely to have a significant effect on the consideration to be received by the Borden shareholders in the exchange offer.

62. In addition, the 1994 restructuring, as Shames had predicted, began to bear fruit. On October 25, 1994, management reported the third quarter results for the Company. Despite a net loss of $.92 cents per share (including charges of $52.2 million for the KKR fees and expenses) the Company posted gains in sales of 3.9%. But for the pretax charges, the Company would have earned $.12 per share. The board failed to give adequate consideration to the nascent success of Mr. Shames' restructuring plan in giving final approval to the exchange offer. Indeed, it has been widely reported that KKR will undertake to continue the 1994 restructuring plan and will sell off the dairy business and certain assets of the Products division following the acquisition of control of Borden.

63. After having expended countless hours, millions of shareholder dollars, and enormous management energies on numerous restructurings, the board, faced with the possibility of real success, simply cut and ran. The board, in a blatant abdication of its fiduciary duties, whether from fatigue or

lack of will, decided to have done with the problem of turning around the Company and turned over the store to KKR at a grossly inadequate price. As one investor noted "The board of directors of Borden is the same board that let this company deteriorate over the last couple of years. They just agreed to this transaction and walked away from the problem." In addition, the Merger Agreement secures for certain members of the board and management of the Company continued employment with the merged entity and a guarantee of option payments in excess of $2 million, thus revealing the self interest in entrenchment and enrichment of the Director Defendants.

64. Following the announcement of the Merger Agreement the Company has been contacted by various entities seeking to explore an alternative transaction. All have been met with inattention by the board and its advisors. One investment banker for Borden was quoted, anonymously, as saying they were told "not to waste their time" trying to find a superior transaction for the Borden shareholders.

COUNT I

(Violations of Sections 14(e) and 20(a) of the Securities and Exchange Act of 1934 and Against Defendants Borden, KKR and the Director Defendants)

65. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 64 of this complaint.

66. In connection with the KKR tender offer, Borden filed its Form 14D-9, Solicitation/Recommendation Statement pursuant to Section 14(d)(4) of the 1934 Act. In connection with the offer, KKR has also filed a Form 14D-1 pursuant to the 1934 Act. Both the 14D-9 and the 14D-1 are materially false and misleading for the following reasons:

a. Borden's Form 14D-9 misleadingly represents that non-tendering Borden shareholders will receive the "same consideration" as was paid in the exchange.

b. They falsely represent that in evaluating whether the KKR proposal was the best alternative for the company, the Board considered the results of the third quarter of 1994.

c. They fail to reveal the full details of why the executive in charge of the Company and its restructuring refused to agree to the KKR offer and abstained from all voting on the merger.

d. They fail to state the fact that KKR need only actually obtain the tender of a mere 25% of Borden shares in order to reach the "Minimum Condition" of the offer.

e. They omit to disclose the fact that if RJR stock drops by as little as $.50 per share between November 22, and the undetermined date upon which the exchange ratio will be set, Borden stockholders will receive not $14.25 per share, but materially less. In fact, as of the filing of this complaint, RJR stock is trading within 1/8 of a point of the collar.

f. They falsely stated that the value of the consideration to be received by Borden pursuant to the Stock Option is $300 million.

g. They falsely stated that no other bona fide bidder made a proposal for the company at significantly more per share than the KKR bid.

h. They failed to disclose that Lazard and First Boston are in fact acting as underwriters for the largest secondary offering in history, and being compensated as such.

i. They falsely stated that the consideration to be received by the Borden shareholders in the offer is subject to "unknowable" risk as a result of the tobacco component of RJR's business when the risk can be quantified.

j. They fail to disclose that RJR's spin-off of 17% to 19% of its food business in an initial public offering and the subsequent absolute right of RJR to sell of the remaining 80% of that business leaves tendering Borden shareholders with the risk that they may be trading their shares in a preeminent food business for shares in a tobacco business.

k. They falsely stated that RJR terminated the agreement in principle relating to the Borden tender offer, signed by RJR and KKR over accounting issues.

67. The 14D-9 and 14D-1 are communications to Borden shareholders intended to solicit the tender of shares into the KKR tender offer and to effectuate the merger to which the Director Defendants committed the Company.

68. Section 14(e) provides, in pertinent part, as follows:

> It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, it shall be unlawful for any person to make any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender

> offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation.

69. In disseminating the 14D-9 and 14D-1, the individual defendants intentionally, or with reckless disregard, misrepresented and omitted material facts, as set forth above. The individual defendants purpose in doing so was to disseminate communications which would induce Borden shareholders to tender their shares in the tender offer and thereby effectuate the merger.

70. The 14D-9 was disseminated by the Director Defendants on behalf of Borden. Thus, these defendants, who constitute the majority of the board of Borden and controlled the Company, participated in the violation of Section 14(e) and are liable for such violations under Section 20(a) of the 1934 Act.

71. Defendant KKR knew that the 14D-9 and the 14D-1 contained false and misleading statements and omissions and that the solicitations were intended to induce Borden shareholders to tender their shares to KKR, thereby benefitting KKR at the expense of plaintiffs and the Class.

72. As a result of the actions of the defendants, plaintiffs and other members of the Class have been, and will be, damaged in that they will have been provided with the false

and misleading solicitations and their decision to tender shares to defendant KKR will be influenced by the materially false and misleading 14D-9 and 14D-1.

73. Plaintiffs and the Class have no adequate remedy at law.

COUNT II

(Violations of Section 11 of the Securities Act of 1933 Against Lazard, First Boston and the KKR Defendants)

74. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 64 of this complaint.

75. Pursuant to Section 11 of the Securities Act of 1933, the Class is entitled to injunctive relief "[i]n case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact required to be stated therein or necessary to make the statements therein not misleading . . . ." Alternatively, the Class is entitled to recover damages, jointly and severally from defendants, as follows:

a. RJR as the Registrant;

b. the KKR Defendants who are directors of RJR as signatories to the Registration Statement, and/or directors and officers of RJR; and,

c. Lazard and First Boston as Underwriters for the offering.

76. Pursuant to a Registration Rights Agreement between KKR and RJR, RJR filed a registration statement pursuant to the 1933 Act in relation to the KKR tender offer, and incorporates an offering circular and prospectus (the "Offering Materials"). The offering materials were declared effective on November 22, 1994. Said offering materials contained untrue statements of material facts and omitted facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Those untrue statements are as follows:

a. the Offering Materials falsely state that no other bidder made a proposal for the company at significantly more per share than the KKR bid; and

b. the Offering Materials falsely state that Lazard and First Boston are acting solely as financial advisors to Borden when, in fact, they are acting as underwriters for this largest secondary offering in history, and being compensated as such.

77. As a direct and proximate result of the defendants wrongful conduct, plaintiffs and the Class will

suffer irreparable harm in connection with the offering of RJR common stock and have no adequate remedy at law.

78. The KKR Defendants, Lazard and First Boston were responsible for the materially false and misleading contents of the Offering Materials.

79. Plaintiffs and members of the Class have been solicited to accept the securities issued pursuant to the Offering Materials and are without knowledge of the materially false statements and omissions alleged herein.

80. Neither the named plaintiff nor any member of the Class seeks to recover for purchases of RJR securities after RJR had made generally available to security holders an earnings statement covering a period of at least twelve months beginning after the effective date of the Registration Statement and Prospectus.

81. This action was commenced within one year from when plaintiffs and other Class members were solicited to accept issued pursuant to the registration, and within the time provided in the appropriate statute of limitations.

82. Plaintiffs do not allege in this Section II claim that the defendants, or any of them, were guilty of scienter, that is, of any scheme to defraud or of any

misrepresentations or omissions that were made intentionally or recklessly.

COUNT III

(Breach of Fiduciary Duty Against Defendants Borden, the Director Defendants and KKR)

83. Plaintiffs repeat and reallege the allegations in paragraphs 1 through 64 of this complaint.

84. By the acts described above and in breach of their fiduciary duties to plaintiffs and the other members of the Class, the Director Defendants are unfairly attempting to influence plaintiffs and other members of the Class to tender their Borden shares to KKR in order to benefit defendants. The Director Defendants were and are under a duty:

a. to fully inform themselves before taking, or agreeing to refrain from taking, action;

b. to elicit, promote, consider, and evaluate reasonable and bona fide offers for the Company;1

c. to act in the interest of the equity owners of the Company;

d. not to erect unreasonable barriers to superior offers for the Company;

e. not to act in their own personal self-interest or in the personal interest of other board members;

f. to maximize shareholder value;

g. to obtain the best financial and other terms when the Company, or control of the Company, is for sale or the Company's independent existence will be materially altered by a transaction;

h. to establish a process designed to obtain the highest possible price for the Company; to assure that a "level playing field" exists when more than one bidder for the Company emerges, and not to favor one bidder over another during the "auction" process unless it is designed to assure and is reasonably related to achieving the best possible price;

i. to act with complete candor in communications with the shareholders and to ensure that their statements are true and complete in all material respects and are not materially misleading; and

j. to act in accordance with their fundamental duties of care and loyalty.

85. In connection with the conduct described herein, the Director Defendants violated each of the fiduciary duties identified in Paragraph 84 above. In summary, the breaches consisted of agreeing to the merger with KKR:

a. while knowing of the interest of other qualified and bona fide bidders for Borden but failing to take any steps to inform themselves as to the actual amount that such interested parties were willing to pay for Borden;

b. without taking steps to inform themselves as to the true value of Borden in a fair auction or other process thereby agreeing to sell the Company for a price and which was at least more than $1.75 per share less than its true value;

c. by entering into a merger agreement which contains provisions designed not only to thwart, impede, delay, and/or make prohibitively expensive bona fide competing bids for Borden, but also to guarantee a "concentration of influence" and "significant influence" over Borden by KKR, including:

(i) A lock up stock option (the "Stock Option"), which allows KKR to purchase 19.9% of

Borden's outstanding common stock (approximately 28,138,000 shares) at the favorable price of $11 per share, payable in RJR stock, and thus permits KKR to obtain over 33% of Borden's board seats if the KKR offer is unsuccessful; and,

(ii) A disproportionate numbers of success fees and "topping fees" which, in the aggregate, amount to no less than $65 million -- $20 million of which has already been paid to KKR;

d. where the sole consideration to be paid to Borden shareholders consists of shares of RJR which the directors knew was in danger of severe decline due to: (i) the inherent risk of RJR's tobacco holdings; (ii) the recent announcement of RJR's public offering of 17% - 20% of its non-tobacco assets and the absolute right of RJR to dispose of the remaining 80%; and (iii) the dilutive effect of the entry into the market of at least 109 million and at most 354 million shares of freely tradable RJR common shares;

e. refusing to obtain an expert opinion on the risks inherent in tobacco liability and the effect such liability might have on the consideration to be received by the Borden stockholders;

f. refusing to and failing to meet, discuss, or negotiate in good faith with known and identified bona fide competing bidders for Borden who were willing to offer, and did offer, to Borden and its stockholders financial consideration and other terms which were substantially better than those offered by KKR;

g. without taking steps to inform themselves in any manner whatsoever whether Japonica Partners ("Japonica"), was willing to pay more for Borden than KKR; and

h. making materially false and misleading statements to Borden's shareholders with respect to the sale of Borden to KKR.

86. If the breaches of fiduciary duty described herein are permitted to continue and are not remedied through the equitable powers of this Court, the shareholders of Borden will lose control of, and their equity interest in, the Company through a transaction designed and entered into not to benefit the shareholders, but the Director Defendants, management and KKR. Unless the transaction is enjoined, the shareholders will forever lose the opportunity to have the value of their Company arrived at through competitive bidding on a level playing field

and the opportunity that other bidders may come forward and construct a transaction that is financially superior to that offered by KKR. Damages for the losses suffered by plaintiffs and the Class are not readily or easily calculable and cannot, in any case, compensate them for special losses involved in the structuring of a sale of their Company as they only have one company to sell and once disposed of it will be forever gone.

87. Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiffs demand judgment and preliminary and permanent relief, including injunctive relief, in their favor and in favor of the Class and against the defendants as follows:

A. Declaring that this action is properly maintainable as a class action under Rule 23 of the Federal Rules of Civil Procedure.

B. Declaring and decreeing that the KKR Merger Agreement and Stock Option Agreement were entered into in breach of the fiduciary duties of the Director Defendants and is therefore unlawful and unenforceable.

C. Enjoining defendants from proceeding with the Merger Agreement and Stock Option Agreement.

D. Enjoining defendants from consummating the acquisition of Borden, or a business combination with a third party, unless and until the Company adopts and implements a procedure or process, such as an auction, to obtain the highest possible price for the Company.

E. Invalidating as unlawful and in breach of the fiduciary duties of the Director Defendants the Stock Option Agreement and the topping fee and expense reimbursement provisions of the Merger Agreement.

F. Invalidating as unlawful and in breach of the fiduciary duties of the Director Defendants the payment of the $20 million initial fee paid to KKR on or about September 12, 1994 and directing its return to Borden.

G. Invalidating as unlawful and in breach of the fiduciary duties of the Director Defendants the agreement to pay an additional $30 million to KKR in the event KKR acquires more than 50% of the outstanding common stock of Borden.

H. Declaring that the defendants have violated Sections 14(e) and 20(a) of the 1934 Act.

I. Declaring that defendants RJR, the RJR directors, Lazard and First Boston have violated Section 11 of the 1933 Act.

J. Rescinding, to the extent already implemented, the Merger Agreement or any terms thereof.

K. Requiring defendants to publicly disseminate a communication, in a form deemed appropriate by the Court, retracting and correcting the false and misleading statements contained the in the 14D-9 and 14D-1 and supplying the material information omitted therefrom.

L. Enjoining the complained of transaction or any related transactions.

M. Ordering defendants, jointly and severally, to pay to plaintiffs and the Class all damages suffered and to be suffered by them as a result of the acts and transactions alleged herein.

N. Awarding plaintiffs the costs and disbursements of the action, including allowance for plaintiffs reasonable attorneys' and experts' fees; and

O. Granting such other relief as may be just and proper in the premises.

JURY DEMAND

Trial by jury demanded.

Dated: November 30, 1994

Respectfully submitted,

ABBEY & ELLIS

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