

August 15, 1986

To Our Clients

D&O Liabilities

Burroughs Corporation is amending its charter pursuant to the recent amendments to the Delaware Corporation Law. Attached are the relevant provisions of the Burroughs proxy statement.

M. Lipton

Attachment

AMENDMENT TO BURROUGHS CERTIFICATE OF INCORPORATION

The Burroughs Board of Directors recommends that the Burroughs stockholders consider and approve a proposal to amend Burroughs Certificate of Incorporation to include a new Article XI. Section 1 of proposed Article XI would limit the personal liability of Burroughs directors to Burroughs or its stockholders for monetary damages for breach of fiduciary duty, Section 2 of proposed Article XI would define and clarify the rights of certain individuals, including Burroughs directors and officers, to indemnification by Burroughs in the event of personal liability or expenses incurred by them as a result of certain litigation against them.

Section 1 of proposed Article XI is consistent with Section 102(b)(7) of the DGCL enacted by the Delaware legislature in June of this year, described below, which is designed, among other things, to encourage qualified individuals to serve as directors of Delaware corporations by permitting Delaware corporations to include in their certificates of incorporation a provision limiting directors' liability for monetary damages for breach of the duty of care. Section 102(b)(7) of the DGCL is an enabling provision only. An amendment to the certificate of incorporation approved by stockholders is required to effect the permitted limitation on liability.

Section 2 of proposed Article XI is consistent with existing DGCL provisions permitting indemnification of certain individuals, including directors and officers. In order to be included in Burroughs Certificate of Incorporation, a provision such as Section 2 must be approved by stockholders. The DGCL would also permit the inclusion of a provision dealing with indemnification in Burroughs By-Laws without stockholder approval to the extent such provision is not inconsistent with Burroughs Certificate of Incorporation. If proposed Article XI is adopted, Burroughs intends to amend its By-Laws to delete Article VI thereof which deals with indemnification of officers and directors.

The text of the proposed Article XI, which is described in greater detail below, is set forth as Annex VII hereto.

The Burroughs Board of Directors believes that it is appropriate and advisable that the Burroughs stockholders adopt the proposed amendment to the Burroughs Certificate of Incorporation and recommends that Burroughs stockholders vote to approve and adopt the proposed amendment.

Background and Reasons for Proposed Amendments. In performing their duties, directors of a Delaware corporation are obligated as fiduciaries to exercise their business judgment and act in what they reasonably determine in good faith, after appropriate consideration, to be in the best interests of the corporation and its stockholders. Decisions made on that basis are protected by the so-called "business judgment rule" and should not be second-guessed by a court in the event of a lawsuit challenging such decisions. The business judgment rule is designed to protect directors from personal liability to the corporation or its stockholders when their business decisions are subsequently challenged. However, the expense of defending lawsuits, the frequency with which unwarranted litigation is brought against directors and the inevitable uncertainties with respect to the outcome of applying the business judgment rule to particular facts and circumstances mean that, as a practical matter, directors and officers of a corporation rely on indemnity from, and insurance procured by, the corporation they serve as a financial backstop in the event of such expenses or unforeseen liability. The Delaware legislature has recognized that adequate insurance and indemnity provisions are often a condition of an individual's willingness to serve as a director of a Delaware corporation. The DGCL has for some time specifically permitted corporations to provide indemnity and procure insurance for its directors and officers.

Recent changes in the market for directors and officers liability insurance have resulted in the unavailability for directors and officers of many corporations of any meaningful liability insurance coverage. Insurance carriers have in certain cases declined to renew existing directors and officers liability policies, or have increased premiums to such an extent that the cost of obtaining such insurance becomes prohibitive. Moreover, current policies often exclude coverage for areas where the service of qualified independent directors is most needed. For example, many policies do not cover liabilities or expenses arising from directors and officers activities in response to attempts to take over a corporation. Such limitations on the scope of insurance coverage, along with high deductibles and low limits of liability, have undermined meaningful directors and officers liability insurance coverage.

The unavailability of meaningful directors and officers liability insurance is attributable to a number of factors, many of which are affecting the liability insurance industry generally, including the granting of unprecedented damage awards and reduced investment income on insurance company investments. Although Burroughs has to date been able to obtain insurance coverage for directors and officers on a basis which it believes acceptable, Burroughs has experienced the increase in premiums and decrease in total coverage which is symptomatic of the problems in the liability insurance industry. Moreover, Burroughs current policies expire yearly. Hence, Burroughs is exposed to yearly renegotiation of premiums and coverage, as well as cancellation, in the future. The proposed amendment is designed to assure that Burroughs directors and officers do not lose the protection they have had in the past if insurance coverage continues to decrease or becomes unavailable.

According to published sources, the inability of corporations to provide meaningful director and officer liability insurance has had a damaging effect on the ability of public corporations to recruit and retain corporate directors. Although Burroughs has not directly experienced this problem, the Burroughs Board of Directors believes that Burroughs should take every possible step to ensure that Burroughs will continue to be able to attract the best possible officers and directors.

Recognizing the potential threat to Delaware corporations caused by the recent changes in the market for liability insurance for directors and officers, in June of this year the Delaware legislature enacted amendments of the DGCL designed to permit Delaware corporations to limit director liability under certain circumstances and clarifying the scope of indemnification authorized by the statute. In the official synopsis of the bill that was enacted, the Delaware legislature stated that "the unavailability of traditional [insurance] policies (and, in many cases, the unavailability of any type of policy from traditional insurance carriers) has threatened the quality and stability of the governance of Delaware corporations because directors have become unwilling, in many instances, to serve without the protection such insurance provides and, in other instances, may be deterred by the unavailability of insurance in certain circumstances from making entrepreneurial decisions." Accordingly, the Delaware legislature revised the DGCL (i) so as to permit Delaware corporations to limit or eliminate personal liability of directors under certain circumstances by means of an amendment to the certificate of incorporation approved by stockholders, and (ii) to clarify the ability of corporations to provide substitute protection, in the form of indemnity.

The proposed amendment to Burroughs Certificate of Incorporation is consistent with the recent amendments to the DGCL. The purpose of the proposed amendment and the reason it is being recommended to stockholders is to ensure that Burroughs will continue to be able to attract individuals of the highest quality and ability to serve as its officers and directors.

Proposed Amendment to Burroughs Certificate of Incorporation. The following description is a summary of the proposed amendment, which would add a new Article XI to the Certificate of Incorporation of Burroughs. The text of the proposed amendment is set forth in Annex VII hereto and should be read in its entirety by stockholders.

Elimination of Liability in Certain Circumstances. Section 1 of proposed Article XI provides that a director of Burroughs shall not be personally liable to the corporation 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 corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for paying a dividend or approving a stock repurchase in violation of Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit.

Section 1 of proposed Article XI would protect the Burroughs directors against personal liability from breaches of their duty of care. Under Delaware law, absent adoption of proposed Article XI, directors can be held liable for gross negligence in the performance of their duty of care but not for simple negligence. If adopted by the Burroughs stockholders, Section 1 of proposed Article XI would absolve directors of liability for negligence in the performance of their duties, including gross negligence. Directors would remain liable for breaches of their duty of loyalty to the corporation and its stockholders, as well as acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law and transactions from which a director derives improper personal benefit. Section 1 would not absolve directors of liability under Section 174 of the DGCL, which makes directors personally liable for unlawful dividends or unlawful stock repurchases or redemptions and expressly sets forth a negligence standard with respect to such liability.

While Section 102(b)(7) has not been the subject of any judicial interpretation, Burroughs believes that, except for the circumstances specified in the statute and Section 1 of proposed Article XI, Section 1 will be effective to eliminate monetary liability of directors for a breach of fiduciary duty in connection with future mergers and other business combination transactions involving Burroughs.

While Section 1 of proposed Article XI provides directors with protection from awards of monetary damages for breaches of the duty of care, it does not eliminate the directors' duty of care. Accordingly, Section 1 of proposed Article XI would have no effect on the availability of equitable remedies such as an injunction or rescission based upon a director's breach of the duty of care. Furthermore, liabilities which may arise out of acts or omissions occurring prior to the adoption of Section 1 (including liabilities, if any, which might arise in connection with the Merger based on acts or omissions prior to adoption of Section 1) would not be covered by Section 1, so that directors would remain potentially liable for monetary damages in connection with any such acts or omissions. In addition, Section 1 would apply only to claims against a director arising out of his role as a director, and would not apply, if he is also an officer, to his role as an officer or in any capacity other than that of a director or to his responsibilities under any other law, such as the Federal securities law.

Indemnification and Insurance. Section 2 of proposed Article XI of the Certificate of Incorporation would replace Article VI of Burroughs current By-Laws which presently provides that directors, officers and other individuals shall be indemnified by Burroughs to the full extent permitted by law. Under the DGCL, directors and officers as well as other employees and individuals may be indemnified against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement in connection with specified actions, suits or proceedings, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation — a "derivative action") if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard of care is applicable in the case of derivative actions, except that indemnification only extends to expenses (including attorneys' fees) incurred in connection with defense or settlement of such an action and the DGCL requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation.

Section 2(a) would provide that each person who was or is made a party to, or is involved in, any action, suit or proceeding by reason of the fact that he is or was a director or officer of Burroughs (or was serving at the request of Burroughs as a director, officer, employee or agent for another entity) while serving in such capacity shall be indemnified and held harmless by Burroughs, to the full extent authorized by the DGCL, as in effect (or, to the extent indemnification is broadened, as it may be amended) against all expense, liability or loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts to be paid in settlement) reasonably incurred by such person in connection therewith. Section 2(a) would further provide that rights conferred thereby shall be contract rights and shall include the right to be paid by Burroughs the expenses incurred in defending the proceedings specified above, in advance of their final disposition provided that, if the DGCL so requires, such payment shall only be made upon delivery to Burroughs by the indemnified party of an undertaking to repay all amounts so advanced if it shall ultimately be determined that the person receiving such payments is not entitled to be indemnified under such Section 2 or otherwise. Section 2(a) provides that Burroughs may, by action of its Board of Directors, provide indemnification to its employees and agents with the same scope and effect as the foregoing indemnification of directors and officers.

Section 2(b) provides that persons indemnified under Section 2(a) may bring suit against Burroughs to recover unpaid amounts claimed thereunder, and that if such suit is successful, the expense of bringing such suit shall be reimbursed by Burroughs. Section 2(b) further provides that while it is a defense to such a suit that the person claiming indemnification has not met the applicable standards of conduct making indemnification permissible under the DGCL, the burden of proving the defense shall be on Burroughs and neither the failure of the Burroughs Board of Directors to have made a determination that indemnification is proper, nor an actual determination that the claimant has not met the applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

Section 2(c) provides that the right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in paragraphs 2(a) and 2(b) shall not be exclusive of any other right which any person may have or acquire under any statute, provision of the Burroughs Certificate of Incorporation or By-Laws, or otherwise. Finally, Section 2(d) provides that Burroughs may maintain insurance, at its expense, to protect itself and any of its directors, officers, employees or agents against any expense, liability or loss, whether or not Burroughs would have the power to indemnify such person against such expense, liability or loss under the DGCL.

The provisions of Section 2 of Article XI described above change the current By-Law provisions in several respects. The proposed Section 2 provides that if a person is or was serving in any capacity with any entity at the request of Burroughs, such person will be entitled to the specified indemnification, eliminating the current By-Law requirement that Burroughs have an interest in such entity either as an owner of capital stock or as a creditor. The proposed amendment contains provisions similar to those of the current By-Laws which require Burroughs to indemnify certain persons to the fullest extent authorized by the DGCL, but make it explicit that any amendment to the DGCL will not have any effect (with respect to actions prior to the date of such change or with respect to the contract rights of directors under Section 2(a) of Article XI) unless it permits Burroughs to provide broader indemnification rights than previously permissible. The proposed amendment specifies that any indemnification thereunder continues as to a person who has ceased to be a director or officer of Burroughs and inures to the benefit of his or her heirs, executors and administrators and provides that the right to indemnification is a contract right. The current By-Laws do not provide that the right to indemnification is a contract right. The proposed amendment modifies the current By-Law provision, by making advances of expenses incurred in defending a proceeding mandatory provided that, if required by the DGCL, the person seeking such advances provides an undertaking to Burroughs to repay all amounts so advanced if it shall ultimately be determined that the person receiving such expenses is not entitled to be indemnified. The proposed amendment adds a new provision which explicitly provides that any person claiming indemnification may sue Burroughs for payment of any amounts incurred, that Burroughs in that case will have the burden of proving that the claimant has not met the standards of conduct which make it permissible to indemnify the person for the amount claimed under the DGCL and that neither the failure by the Board of Directors, independent legal counsel or Burroughs stockholders to determine whether indemnification is proper, nor an adverse determination of any of such persons, will be a defense or create a presumption that the person has not met the applicable standard of conduct. Finally, the proposed amendment adds two new provisions which had been previously permitted under Delaware law stating that any rights under Section 2 of Article XI are non-exclusive and that Burroughs may maintain insurance against expenses, liability or losses which are not subject to indemnification under the DGCL.

Approval of the proposal to amend Burroughs Certificate of Incorporation is recommended by the Board of Directors of Burroughs. Proxies solicited by the Board of Directors will be so voted unless stockholders specify in their proxies a contrary choice.