

Complaint

IN THE MATTER OF

SOLVAY S.A.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-4046; File No. 0210067

Complaint, April 29, 2002--Decision, June 21, 2002

This consent order addresses the acquisition by Respondent Solvay S.A. -- whose United States operations produce, among other things, polyvinylidene fluoride ("PVDF"), a fluoropolymer used in applications such as highly durable architectural coatings, wire and cable jacketing, fiber optic raceways, chemical processing equipment, and semiconductor manufacturing equipment -- of Ausimont S.p.A. from Italenergia S.p.A. The order, among other things, requires the respondent to divest the Solvay Fluoropolymers Business -- including its Decatur, Alabama plant and its interest in a joint venture that manufactures the main raw material for PVDF -- to an acquirer approved by the Commission. The order also requires the respondent to provide the acquirer with a royalty-free license to Solvay intellectual property -- including detailed information about the respondent's production of PVDF at its two plants in Alabama and France -- and the scope of the license allows the acquirer to manufacture or sell PVDF anywhere in the world. An accompanying Order to Hold Separate and Maintain Assets requires the respondent to preserve the Solvay Fluoropolymers Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

Participants

For the Commission: *Robert S. Tovsky, Eric Sprague, Oded Pincas, Barbara Shapiro, Jacqueline Tapp, Jessica Rosen, Richard Liebeskind, Daniel P. Ducore, John Howell, Charissa P. Wellford and Mary T. Coleman.*

For the Respondent: *D. Stuart Meiklejohn, Sullivan & Cromwell.*

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COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Solvay S.A. (“Solvay”) has entered into an agreement to acquire certain voting securities of Ausimont S.p.A. (“Ausimont”), a subsidiary of Italenergia S.p.A. and that the acquisition, if consummated, would result in a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENT

1. Respondent Solvay S.A. is a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its principal office and principal place of business located at Rue du Prince Albert, 33, B-1050, Brussels, Belgium. Solvay, among other things, engages in the worldwide development, manufacture and sale of chemicals, plastics, and pharmaceuticals.

2. At all times relevant herein, Respondent Solvay S.A. has been and is now engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. THE PROPOSED ACQUISITION

3. On December 21, 2001, Solvay S.A. entered into a share purchase agreement with Montedison S.p.A. and Longside International S.A. to acquire Ausimont. Montedison S.p.A., which owned eighty percent of Ausimont, is a wholly-owned subsidiary of Italenergia S.p.A.

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C. RELEVANT MARKET

4. One relevant line of commerce in which to analyze the effects of Solvay's proposed acquisition of Ausimont is the manufacture and sale of polyvinylidene fluoride ("PVDF"), which includes coatings grades of PVDF and melt-processible grades. Coatings grade PVDF is used in highly durable exterior coatings. Melt-processible PVDF is used in a range of applications, including wire and cable jacketing, fiber optic raceways, chemical processing equipment, and semiconductor manufacturing equipment. There are no economic substitutes for PVDF in the applications in which it is used. That is, a small but significant and non-transitory price increase would not significantly affect the current level of consumption of any of the grades of PVDF in any of the significant end-use applications.

5. A second line of commerce in which to analyze the effects of the acquisition is the manufacture and sale of melt-processible grades of PVDF. These grades have different physical properties than coatings grades of PVDF. There are no economic substitutes for melt-processible PVDF in the applications in which it is used. However, some firms can produce both coatings grades and melt-processible grades in some or all of their equipment, without incurring significant sunk costs.

6. The relevant geographic market in which to analyze the effects of Solvay's proposed acquisition of Ausimont is the world.

D. MARKET STRUCTURE

7. The markets for PVDF and melt-processible PVDF are highly concentrated. Three manufacturers, Solvay, Ausimont, and AtoFina, currently account for approximately ninety percent of world PVDF capacity. All three manufacturers produce melt-processible grades of PVDF, but Solvay does not produce coatings grades.

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8. Solvay produces PVDF in the U.S. at a plant in Decatur, Alabama. It also produces PVDF at its plant in Tavaux, France. Ausimont produces PVDF at a plant in Thorofare, New Jersey.

9. The proposed acquisition would increase concentration significantly for all grades of PVDF, as measured by the Herfindahl-Hirschman Index ("HHI"), by more than 1000 points, to over 4300. It would increase the HHI for melt-processible PVDF by several hundred points, to over 5100. In each case the market is already highly concentrated and would be significantly more concentrated as a result of the proposed acquisition.

E. CONDITIONS OF ENTRY

10. *De novo* entry or fringe expansion into the relevant market would require a substantial sunk investment and a significant period of time, such that new entry would be neither timely, likely, nor sufficient to deter or counteract the effects of the acquisition. Further, effective entry would require vertical integration into VF₂, which is a necessary raw material to produce PVDF, and which is not widely traded. Entry into VF₂ would also take a long time, and would likely require adding capacity beyond that which is required to support efficient PVDF production.

F. MARKET CHARACTERISTICS FACILITATE
COORDINATED INTERACTION

11. The characteristics of the market for PVDF facilitate coordinated interaction among producers. Among such characteristics are:

- a. The market for PVDF is already highly concentrated, and after the acquisition there would only be two significant competitors;
- b. Reliable pricing information is readily available from customers;

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- c. PVDF is generally sold in small quantities to numerous customers; and
- d. Pricing does not respond significantly to changing demand and supply conditions.

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H. EFFECTS OF THE PROPOSED ACQUISITION

12. The effect of the acquisition may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

- a. It will substantially increase concentration in the market for PVDF;
- b. It will significantly enhance the likelihood of coordinated interaction in the relevant market among the competitors in the manufacture and sale of PVDF;
- c. It will eliminate Ausimont as a growing competitor in melt-processible grades of PVDF, and;
- d. It will lead to higher prices and a reduced level of innovation in PVDF.

I. VIOLATIONS CHARGED

13. The acquisition agreement between Solvay and Montedison S.p.A. and Longside International S.A., as described in paragraph 4, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

14. The acquisition of Ausimont by Solvay, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-ninth day of April, 2002, issues its complaint against said Respondent.

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By the Commission.

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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Solvay S.A. (“Solvay”) of certain voting securities of Ausimont S.p.A. (“Ausimont”), and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Agreement Containing Consent Orders is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and its Order to Hold Separate and Maintain Assets and having accepted the executed Agreement Containing Consent Orders and placed such Agreement Containing Consent Orders on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments filed thereafter by interested persons pursuant to Commission Rule 2.34, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

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1. Respondent Solvay S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Rue du Prince Albert, 33, B-1050 Brussels, Belgium. Respondent's wholly-owned subsidiary, Solvay America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3333 Richmond Avenue, Houston, Texas 77098.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

- A. "Solvay" means Solvay S.A., a Belgian Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Solvay S.A., including Solvay America, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Ausimont" means Ausimont S.p.A., an Italian Corporation, and its parents, subsidiaries, divisions, groups, and affiliates controlled by Ausimont.
- C. "Alventia" means Alventia LLC, a limited liability company organized, existing and doing business under the laws of Delaware, and its subsidiaries and divisions, as well as groups and affiliates controlled by Alventia. Alventia does not include Dyneon LLC or Solvay.
- D. "Commission" means the Federal Trade Commission.

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- E. "Respondent" means Solvay S.A.
- F. "Acquirer" means each Person approved by the Commission to acquire the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business.
- G. "Acquisition" means the proposed acquisition of Ausimont by Solvay, as described in the December 21, 2001, Share Purchase Agreement between Montedison S.p.A., Longside International S.A. and Solvay S.A.
- H. "Actual Cost" means Respondent's direct out-of-pocket expenses incurred in providing a service.
- I. "Asset Purchase Agreement" means all agreements submitted to and approved by the Commission between Solvay and the Acquirer that sell, assign, or otherwise convey the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business to one or two Acquirers.
- J. "Ausimont - New Jersey Fluoropolymers Business" means all of Solvay's right, title, and interest acquired in the Acquisition in all assets and businesses in the world relating to the research, development, manufacture, marketing, sale, and distribution of PVDF at, from, and by the Ausimont Thorofare Plant, including, but not limited to:
1. the Ausimont Thorofare Plant;
 2. the Ausimont Thorofare VF₂ Plant (subject to the proviso below)
 3. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF;

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4. all personal property;
5. all intellectual property, including but not limited to Ausimont PVDF Production Information, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;
6. all contracts entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
7. all governmental approvals, consents, licenses, permits, waivers, or other authorizations;
8. all warranties and guaranties, express or implied;
9. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;
10. all customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files;

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11. all books, records, and files;
12. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies;
13. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods; and,
14. all items of prepaid expense.

Provided, however, that the Ausimont - New Jersey Fluoropolymers Business does not include: (a) the HCFC 142b manufacturing equipment located at the Ausimont Thorofare Plant; (b) any assets used exclusively in the research, development, manufacture or sale of fluoroelastomers or any other product unrelated to PVDF; and (3) those assets described in Confidential Exhibit 1.

K. "Ausimont - New Jersey Fluoropolymers Employees" means all full-time, part-time, or contract employees of Solvay:

1. whose duties on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business directly or indirectly, wholly or in part, relate to the Ausimont - New Jersey Fluoropolymers Business;
2. whose duties related primarily to the Ausimont - New Jersey Fluoropolymers Business at any time during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business; or,

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3. who performed duties that related directly or indirectly, wholly or in part, to the Ausimont - New Jersey Fluoropolymers Business for all or any part of a day for a cumulative one hundred (100) work days (whether consecutive days or not) during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business.

Provided, however, that Ausimont - New Jersey Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 2 (“Ausimont Retained Employees”).

- L. “Ausimont - New Jersey Fluoropolymers Key Employees” means any Ausimont - New Jersey Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within the Ausimont - New Jersey Fluoropolymers Business.
- M. “Ausimont PVDF Production Information” means all information relating to the past, present, planned, developed or researched production of each grade of PVDF, whether at the Ausimont Thorofare Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest pursuant to the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, all specifications for all products sold to all customers, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed or researched production by Ausimont of any grades of PVDF in the ordinary course of business.

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- N. “Ausimont Thorofare Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF.
- O. “Ausimont Thorofare VF₂ Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of VF₂.
- P. “Decatur PVDF Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Solvay and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or indirectly related to the research, development, manufacture, marketing, sale, and distribution of PVDF.
- Q. “Decatur VF₂ Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Alventia and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or indirectly related to the research, development, manufacture, marketing, sale, and distribution of VF₂.
- R. “Divestiture Agreements” means:
1. the Asset Purchase Agreement;
 2. the Non-Exclusive PVDF Technology License;
 3. the Non-Exclusive VF₂ Technology License;

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4. the Non-Exclusive Ausimont Technology License;
 5. the Trademark License;
 6. the Supplemental Rights Agreement; and,
 7. any other agreements between Solvay and each Acquirer related to the divestiture.
- S. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph V. of this Order.
- T. “Effective Date of Divestiture” means the date on which the divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, to the Acquirer is consummated.
- U. “HCFC-142b” means hydrochlorofluorocarbon 142b which, among other uses, is used as a raw material in the manufacture of VF₂.
- V. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- W. “Monitor Trustee” means the trustee appointed pursuant to Paragraph IV. of this Order.
- X. “Non-Exclusive VF₂ Technology License” means a non-exclusive, royalty free, fully assignable license, to the Acquirer, with the right to sub-license, to make, use, and sell VF₂ anywhere in the world using all of the intellectual property controlled by Solvay which relates to the research, development, manufacture or sale of VF₂; *provided, however, the Non-Exclusive VF₂ Technology License shall not require Solvay or the Acquirer to provide or license to the other party to the Non-Exclusive VF₂ Technology*

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License any improvements to any patents or other intellectual property granted, invented, researched, or developed after the Effective Date of Divestiture.

- Y. “Non-Public Ausimont - New Jersey Fluoropolymers Information” means any information relating to the Ausimont - New Jersey Fluoropolymers Business not in the public domain. Non-Public Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondent without reference to or use of Non-Public Information; and (iii) information that is required to be disclosed by law.
- Z. “Non-Public Solvay Fluoropolymers Information” means any information relating to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business not in the public domain. Non-Public Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondent without reference to or use of Non-Public Information; and (iii) information that is required to be disclosed by law.
- AA. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization or other entity.
- BB. “PVDF” means polyvinylidene fluoride, including homopolymers and copolymers.
- CC. “SFT” means Solvay Fluoropolymers, Inc., a wholly-owned subsidiary of Solvay.

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DD. “Solvay/Alventia HCFC-142b Agreement” means the agreement between Solvay and Alventia dated January 19, 1998 pursuant to which Solvay has agreed to provide HCFC-142b to Alventia.

EE. “Solvay Fluoropolymers Business” means:

1. all of Solvay’s right, title, and interest in SFI, including, but not limited to:
 - a. the Decatur PVDF Plant;
 - b. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF;
 - c. all patents owned by Solvay or SFI that are used exclusively for the purpose of manufacturing, selling, or using PVDF in the United States (“Decatur Patents”);
 - d. all know-how relating to the manufacture, sale, and use of PVDF which is reflected in written or electronic records at the Decatur PVDF Plant or in the knowledge of Solvay Fluoropolymers Employees, including, but not limited to trade secrets, ongoing research and development, research materials, technical information, management information systems, information contained in management information systems, software, inventions, quality control data, test data, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;
 - e. all contracts entered into with customers (together with associated bid and performance bonds),

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suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;

- f. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Decatur PVDF Plant;
- g. all warranties and guarantees, express or implied, relating to the Decatur PVDF Plant;
- h. all customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials;
- i. all customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files relating to the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
- j. all books, records, and files relating to SFI or the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
- k. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies relating to the Decatur PVDF Plant;
- l. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the Decatur PVDF Plant;

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- m. all items of prepaid expense relating to the Decatur PVDF Plant; and
 - n. any other tangible or intangible right, asset, or property relating to the Decatur PVDF Plant;
2. a non-exclusive, royalty free, fully assignable license, to the Acquirer (“Non-Exclusive PVDF Technology License”), with the right to sub-license, to make, use, and sell PVDF anywhere in the world using all Solvay PVDF Production Information and all other intellectual property (other than the SOLEF® trademark) used at any time by SFI or at the Decatur PVDF Plant, or at other Solvay plants and facilities, or relating to the research, development, manufacture or sale of PVDF, including, but not limited to, intellectual property and other intangible property related to PVDF grades sold by SFI manufactured at locations other than the Decatur PVDF Plant; *provided, however*, the Non-Exclusive PVDF Technology License shall not require Solvay or the Acquirer to provide or license to the other party to the Non-Exclusive PVDF Technology License any improvements to any patents or other intellectual property granted, invented, researched, or developed after the Effective Date of Divestiture.
 3. a non-exclusive, royalty free, fully assignable, one-year license to the Acquirer to use the SOLEF® trademark in its marketing, sale, and distribution of PVDF (“Trademark License”);
 4. a list of customers outside the United States who have purchased PVDF from Solvay within the three years preceding the Effective Date of Divestiture;
 5. a copy of all vendor lists, catalogs, sales promotion literature, and advertising materials used by Solvay in connection with sales of PVDF to any Person outside of

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the United States within the three years preceding the Effective Date of Divestiture;

6. a copy of any computer software located anywhere in the world that relates to the research, development, manufacture, marketing, sale, or distribution of any substance, compound, or product manufactured at the Decatur PVDF Plant;
7. all machinery, equipment, testing equipment, and tools that: (a) are physically located at the Decatur PVDF Plant as of the Effective Date of Divestiture that relate to the research, development, manufacture, marketing, sale or distribution of PVDF at or by the Decatur PVDF Plant or SFI; or (b) at any time within one year of the Effective Date of Divestiture have been physically located at the Decatur PVDF Plant; and,
8. tangible or intangible assets located anywhere in the world that are used exclusively to, or have been used exclusively to, manufacture, market, sell, or distribute PVDF at or by the Decatur PVDF Plant or SFI.

Provided, however, that

- (a) Respondent may retain a list of the twenty (20) largest PVDF customers in the United States, as measured by volumes delivered in the United States, for each of the last three years;
- (b) Respondent may retain all contract rights and copies of files to the extent they are related solely to Solvay PVDF sales in the United States that have not been supplied by production from the Decatur PVDF Plant within twelve (12) months before the date this Order is accepted for public comment; and,
- (c) Solvay Fluoropolymers Business does not include any assets used exclusively in the research, development,

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manufacture or sale of fluoroelastomers or any other product unrelated to PVDF.

FF. “Solvay Fluoropolymers Employees” means:

1. all full-time, part-time, or contract employees of SFI at any time within one year of the Effective Date of Divestiture of the Solvay Fluoropolymers Business; and,
2. all full-time, part-time, or contract employees of Solvay (but excluding employees of SFI) the services of which, wholly or in part, were billed, paid, charged, or invoiced (to the extent such charges can be specifically identified) by or to SFI or Alventia at any time within one year of the Effective Date of Divestiture, but excluding those employees who provided legal, accounting or other purely administrative support to SFI.

Provided, however, that Solvay Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 3 (“Solvay Retained Employees”).

GG. “Solvay Fluoropolymers Key Employees” means any Solvay Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within SFI.

HH. “Solvay PVDF Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of PVDF, whether at the Decatur PVDF Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest, other than through the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance

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information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed, or researched production by Solvay of any grades of PVDF in the ordinary course of business. Solvay PVDF Production Information does not include the supercritical carbon dioxide technology that Solvay has licensed from the University of North Carolina and the know-how defined in Definition I.V.(1).(d).

II. “Solvay VF₂ Joint Venture Business” means Respondent’s ownership interest in Alventia, including any other interests or rights of Solvay associated with Solvay’s ownership in Alventia.

JJ. “VF₂” means vinylidene fluoride monomer.

II.**IT IS FURTHER ORDERED** that:

- A. Solvay shall divest the Solvay Fluoropolymers Business, absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission, no later than one hundred and eighty (180) days from the date upon which this Order becomes final.
- B. Solvay shall divest the Solvay VF₂ Joint Venture Business, absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission, no later than one hundred and eighty days (180) days from the date upon which this Order becomes final.

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- C. Respondent shall divest both the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business together to a single Acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission. *Provided, however*, that Respondent may divest the Solvay Fluoropolymers Business to an Acquirer who is not the Acquirer of the Solvay VF₂ Joint Venture Business, but only: (1) if Respondent, despite having made good faith efforts, is unable to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business to the same Acquirer; (2) if the Acquirer of the Solvay Fluoropolymers Business, by a contract, agreement, legally enforceable interest or another method acceptable to the Commission, has an assured supply of VF₂ from one or more Persons other than Respondent in a manner that will allow the Acquirer of the Solvay Fluoropolymers Business to operate the Solvay Fluoropolymers Business on a viable and competitive basis and accomplish the purposes of the Order; and (3) if the Commission, in its sole discretion, approves such divestiture.
- D. Respondent shall, and the Divestiture Agreements shall require Respondent to, do the following:
1. provide to the Acquirer of the Solvay Fluoropolymers Business on or before the Effective Date of Divestiture the Non-Exclusive PVDF Technology License and, if the Acquirer of the Solvay Fluoropolymers Business is not the Acquirer of the Solvay VF₂ Joint Venture Business, Respondent shall also provide to the Acquirer of the Solvay Fluoropolymers Business the Non-Exclusive VF₂ Technology License;
 2. at the option of the Acquirer of the Solvay VF₂ Joint Venture Business, and subject to the prior approval of the Commission, provide to the Acquirer of the Solvay VF₂ Joint Venture Business on or before the Effective Date of

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Divestiture the Non-Exclusive VF₂ Technology License for use in the research, development, manufacture, or sale of VF₂ at: (a) locations other than the Decatur VF₂ Plant; and (b) the Decatur VF₂ Plant;

provided, however, that Respondent shall only be required to license for use at the Decatur VF₂ Plant: (i) intellectual property which is contained in the Non-Exclusive VF₂ Technology License and which has not already been conveyed to Alventia; and, (ii) intellectual property which is contained in the Non-Exclusive VF₂ License (if any) which is reasonably necessary to allow the continued manufacture of VF₂ at the Decatur VF₂ Plant in a manner that achieves the purposes of the Order; and,

provided further, that nothing in this Paragraph II.D.2. shall amend or modify any existing VF₂ licensing agreement between Respondent and Alventia;

3. assign to the Acquirer of the Solvay Fluoropolymers Business on or before the Effective Date of Divestiture the Decatur Patents, *provided that*, Respondent will be permitted, at the time it makes such assignment, and with the approval of the Commission, to retain a non-exclusive, royalty free assignable license, with the right to sub-license, to practice all claims of the Decatur Patents;
4. at the option of the Acquirer of the Solvay Fluoropolymers Business and the Acquirer of the Solvay VF₂ Joint Venture Business and subject to the prior approval of the Commission, enter into contracts, licenses, or other agreements with the Acquirer ("Supplemental Rights Agreement") sufficient to permit the Acquirer to use, for a period of up to two years after the Effective Date of Divestiture, assets, located anywhere in the world, that are not included in the

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definition of Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business but that have been used in some way in the twelve (12) months preceding the date this Order is accepted for public comment, in the research, development, manufacture, marketing, sale, or distribution of PVDF or VF₂ at or by the Decatur PVDF Plant or SFI;

5. at the request of the Acquirer of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or Ausimont - New Jersey Fluoropolymers Business (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business), at Solvay's Actual Cost, and at any time up to two years following the Effective Date of Divestiture:
 - a. provide all technical assistance relating to obtaining and complying with all governmental approvals relating to the operation of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) or Ausimont - New Jersey Fluoropolymers Business (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business);
 - b. provide all technical assistance relating to the research, development, marketing, sale, and distribution of PVDF or VF₂ in the world, or relating to the operation of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) or Ausimont - New Jersey Fluoropolymers Business (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business);

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- c. provide all technical assistance relating to the process of obtaining customer or other product approvals related to PVDF or VF₂;
 - d. provide such technical assistance as is necessary to enable the Acquirer to use the technology contained in the Non-Exclusive PVDF Technology License and the Non-Exclusive VF₂ Technology License (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) or Ausimont - New Jersey Production Information (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business);
6. at the request of the Acquirer of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business:
- a. if Solvay or the Divestiture Trustee divests the Solvay Fluoropolymers Business:
 - (1)not later than forty five days before the Effective Date of Divestiture, Solvay shall: (i) provide to the Acquirer a list of all Solvay Fluoropolymers Employees; (ii) allow the Acquirer an opportunity to interview any Solvay Fluoropolymers Employees; (iii) allow the Acquirer to inspect the personnel files and other documentation relating to such Solvay Fluoropolymers Employees;
 - (2)not later than thirty days before the Effective Date, Solvay shall provide an opportunity for the Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Solvay, with any one or more of the Solvay Fluoropolymers Employees; and, (ii) to make

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offers of employment to any one or more of the
Solvay Fluoropolymers Employees;

(3) Solvay shall: (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Solvay Fluoropolymers Employees, directly or indirectly attempt to persuade any one or more of the Solvay Fluoropolymers Employees to decline any offer of employment from the Acquirer, or offer any incentive to any Solvay Fluoropolymers Employee to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Solvay Fluoropolymers Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Solvay that directly or indirectly relate to PVDF or the employment of any one or more of the Solvay Fluoropolymers Employees by the Acquirer (iii) not interfere with the employment by the Acquirer of any Solvay Fluoropolymers Employee; and, (iv) continue employee benefits offered by Solvay until the Effective Date of Divestiture, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits; and,

(4) pay a bonus equal to ten (10) percent of the employee's annual salary to any and all Solvay Fluoropolymers Key Employees who accept an offer of employment from the Acquirer no later than fourteen (14) days from the Effective Date of Divestiture; or

b. if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business:

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- (1) not later than forty five days before the Effective Date of Divestiture, Solvay shall: (i) provide to the Acquirer a list of all Ausimont - New Jersey Fluoropolymers Employees; (ii) allow the Acquirer an opportunity to interview any Ausimont - New Jersey Fluoropolymers Employees; (iii) allow the Acquirer to inspect the personnel files and other documentation relating to such Ausimont - New Jersey Fluoropolymers Employees;
- (2) not later than thirty days before the Effective Date of Divestiture, Solvay shall provide an opportunity for the Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Solvay, with any one or more of the Ausimont - New Jersey Fluoropolymers Employees; and, (ii) to make offers of employment to any one or more of the Ausimont - New Jersey Fluoropolymers Employees;
- (3) Solvay shall: (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Ausimont - New Jersey Fluoropolymers Employees, directly or indirectly attempt to persuade any one or more of the Ausimont - New Jersey Fluoropolymers Employees to decline any offer of employment from the Acquirer, or offer any incentive to any Ausimont - New Jersey Fluoropolymers Employee to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Ausimont - New Jersey Fluoropolymers Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Solvay or Ausimont that directly or indirectly relate to PVDF or the employment of any one or more of the Ausimont - New Jersey

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Fluoropolymers Employees by the Acquirer (iii) not interfere with the employment by the Acquirer of any Ausimont - New Jersey Fluoropolymers Employee; and, (iv) continue employee benefits offered by Solvay or Ausimont until the Effective Date of Divestiture, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits; and,

(4) pay a bonus equal to ten (10) percent of the employee's annual salary to any and all Ausimont - New Jersey Fluoropolymers Key Employees who accept an offer of employment from the Acquirer no later than fourteen (14) days from the Effective Date of Divestiture;

7. if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business, provide, at the request of the Acquirer and subject to the prior approval of the Commission, an ongoing supply of HCFC-142b, and access to all assets and services located at the Ausimont Thorofare Plant, related to the research, development, manufacture and sale of PVDF, on the same basis on which Ausimont had relied on such assets and services in connection with the operation of the Ausimont - New Jersey Fluoropolymers Business, and in a manner sufficient to allow the Acquirer to operate the Ausimont - New Jersey Fluoropolymers Business on a viable and competitive basis and accomplish the purposes of this Order.

E. If the Divestiture Trustee divests the Ausimont-New Jersey Fluoropolymers Business, upon the request of the Respondent, and subject to the prior approval of the Commission, Respondent may retain a non-exclusive, royalty free, fully assignable license ("Non-Exclusive Ausimont Technology License"), with the right to sub-license only to Respondent's affiliates in which Respondent

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maintains a 20% or greater ownership interest, to use all intellectual property described in Paragraph I.J.5. of this Order;

provided, however, the Non-Exclusive Ausimont Technology License shall only permit Respondent to use the intellectual property licensed by the Ausimont Technology License for the manufacture, use, or sale of products other than PVDF and VF2.

- F. For a period of one year from the Effective Date of Divestiture:
1. if Solvay or the Divestiture Trustee has divested the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, Solvay shall not, directly or indirectly, solicit, negotiate, hire or enter into any arrangement for the services of all or any of the Solvay Fluoropolymers Employees or the Solvay Fluoropolymers Key Employees employed by the Acquirer, unless such employee's employment has been terminated by the Acquirer; or,
 2. if the Divestiture Trustee has divested the Ausimont - New Jersey Fluoropolymers Business, Solvay shall not, directly or indirectly, solicit, negotiate, hire or enter into any arrangement for the services of all or any of the Ausimont - New Jersey Fluoropolymers Employees or the Ausimont - New Jersey Fluoropolymers Key Employees employed by the Acquirer, unless such employee's employment has been terminated by the Acquirer.
- G. Respondent shall comply with all terms of the Divestiture Agreements, and any breach by Respondent of any term of the Divestiture Agreement shall constitute a violation of this Order. If any term of the Divestiture Agreements varies from the terms of this Order ("Order Term"), then to the

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extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreements, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

- H. No part of this Order precludes any Solvay employee, including any Solvay Retained Employee, after the Effective Date of Divestiture, from performing his or her responsibilities as they relate to PVDF, VF₂ or any other product researched, manufactured or sold by Solvay; *provided that* Respondent shall comply fully with all terms and provisions of the Hold Separate, including, but not limited to, provisions restricting Respondent's employment of Persons participating in the management of assets held separate.
- I. If the Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, Respondent shall comply with all terms of the Solvay/Alventia HCFC-142b Agreement, which agreement is incorporated into and made a part of this Order. At the request of the Acquirer of the Solvay Fluoropolymers Business, and subject to the prior approval of the Commission, the term of such agreement may be extended for a term of up to fifteen (15) years following the Effective Date of Divestiture or otherwise modified upon commercially reasonable terms in order to achieve the purposes of the Order. Any breach by Respondent of any term of the Solvay/Alventia HCFC-142b Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Solvay/Alventia HCFC-142b Agreement, any modification of the Solvay/Alventia HCFC-142b Agreement, without the prior

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approval of the Commission, shall constitute a failure to comply with this Order.

- J. The purpose of the divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business is to ensure the continuing, viable and competitive operation of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business in the same business (including, but not limited to, the research and development of PVDF) and in the same manner in which the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

III.

IT IS FURTHER ORDERED that:

A. Respondent shall:

1. not provide, disclose or otherwise make available any Non-Public Solvay Fluoropolymers Information (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) or Non-Public Ausimont - New Jersey Fluoropolymers Information (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business) to any Person; and,
2. not use any Non-Public Solvay Fluoropolymers Information (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and Solvay VF₂ Joint Venture Business) or Non-Public Ausimont - New Jersey Fluoropolymers Information (if the

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Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business) for any reason or purpose other than as otherwise required or permitted by this Order.

- B. Notwithstanding Paragraph III of this Order and subject to the Hold Separate, Respondent shall use Non-Public Solvay Fluoropolymers Information (if Respondent or the Divestiture Trustee divests the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) and the Non-Public Ausimont - New Jersey Fluoropolymers Information (if the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business) only (i) for the purpose of performing Respondent's obligations under this Order, the Hold Separate, or the Divestiture Agreements; or, (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations.

IV.

IT IS FURTHER ORDERED that:

- A. At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person to serve as Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements made a part of this Order. The Monitor Trustee may be the same person as the Divestiture Trustee, or as the Hold Separate Trustee.
- B. If the Commission appoints a Person to serve as Monitor Trustee pursuant to this Paragraph IV. of this Order, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:
1. The Commission shall select the Monitor Trustee, subject to the consent of Respondent, which consent

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shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice from the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. The Monitor Trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.
3. Within ten (10) days after appointment of the Monitor Trustee, Respondent shall execute an agreement ("Monitor Trustee Agreement") that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order. Respondent may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
4. The Monitor Trustee shall serve until the earlier of: (i) the expiration of this Order pursuant to Paragraph IX.; or (ii) the expiration of all the terms that comprise the Divestiture Agreements.
5. The Monitor Trustee shall have full and complete access to Respondent's books, records, documents, personnel, facilities and technical information relating to

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compliance with this Order and the Divestiture Agreements, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondent shall cooperate with any reasonable request of the Monitor Trustee. Respondent shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondent's compliance with this Order and the Divestiture Agreements.

6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondent shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.
8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as

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Monitor Trustee in the same manner as provided in this Paragraph IV.

9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.
 10. The Monitor Trustee shall report in writing to the Commission concerning Respondent's compliance with this Order and the Divestiture Agreements every ninety days for a period of two years from the date Respondent signs the Consent Agreement and annually thereafter on the anniversary of the date this Order becomes final during the remainder of the Monitor Trustee's period of appointment, and at such other times as representatives of the Commission may request.
- C. Respondent shall comply with all terms of the Monitor Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Monitor Trustee Agreement, any modification of the Monitor Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that:

- A. If Respondent fails to complete the divestitures required by Paragraph II. of this Order within the time periods specified therein, then the Commission may appoint a Divestiture Trustee to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business to an Acquirer or

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Acquirers and to execute Divestiture Agreements that satisfy the requirements of Paragraph II of this Order; provided, however, that the Divestiture Trustee may, subject to the approval of the Commission, substitute the Ausimont - New Jersey Fluoropolymers Business for the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business. The Divestiture Trustee may be the same person as the Monitor Trustee or the Hold Separate Trustee, and will have the authority and responsibility to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business, absolutely and in good faith, and with the Commission's prior approval.

- B. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph V. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V. of this Order to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture

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Trustee within ten (10) days after notice from the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business to an Acquirer that receives the prior approval of the Commission pursuant to the terms of this Order and to enter into Divestiture Agreements with the Acquirer pursuant to the terms of this Order, which Divestiture Agreements shall be subject to the prior approval of the Commission.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a (or amend the existing) trust agreement ("Divestiture Trustee Agreement") that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business to an Acquirer and to enter into Divestiture Agreements with the Acquirer.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission, or the court, in the case of a court-appointed trustee, approves the Divestiture Trustee Agreement described in this Paragraph V. of this Order to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business and to enter into Divestiture Agreements with an Acquirer that satisfies

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the requirements of Paragraph II. of this Order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission or the court a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities of Respondent related to the manufacture, distribution, or sale of PVDF and VF₂, or related to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.
6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of this Order; to assure that Respondent enters into Divestiture Agreements that comply with the provisions of Paragraph II. of this Order; to assure that Respondent complies with the remaining provisions of this Order; and to assure that the Acquirer obtains the assets required to research, develop, manufacture, sell and distribute PVDF and VF₂. The divestiture shall be made to, and the Divestiture Agreements executed with, an Acquirer in the manner set forth in Paragraph II. of this Order; *provided, however, if*

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the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission, *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.

7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer and assuring compliance with this Order.
8. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not

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resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph V. of this Order.
 10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to comply with the terms of this Order.
 11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divested Assets.
 12. The Divestiture Trustee shall report in writing to Respondent and to the Commission every two (2) months concerning his or her efforts to divest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business and Respondent's compliance with the terms of this Order.
- D. If the Divestiture Trustee divests the Ausimont - New Jersey Fluoropolymers Business, Respondent may propose an agreement to allow the Acquirer of the Ausimont - New Jersey Fluoropolymers Business to supply to Respondent VF₂ manufactured at the Ausimont Thorofare VF₂ Plant for, among other things, Respondent's use in the production of fluoroelastomers, provided that such agreement must provide sufficient VF₂ to Acquirer to operate the Ausimont Thorofare PVDF Plant at an annual rate of production no lower than highest annual rate of production at the Ausimont Thorofare PVDF Plant in any of the five (5)

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calendar years preceding the Effective Date of Divestiture, and must provide sufficient VF2 to Acquirer to support the Acquirer's good-faith plans, decisions, or efforts to meet the production goals and targets in Acquirer's business plans currently in effect and to expand production of PVDF at the Ausimont Thorofare PVDF Plant, in a manner consistent with the purposes of this Order. Respondent may also propose an agreement to expand the capacity to manufacture VF2 at the Ausimont Thorofare VF2 Plant. If such agreements are proposed by Respondent, the Divestiture Trustee shall include such agreements among the terms offered to prospective Acquirers, and may submit a divestiture containing such agreement for the approval by the Commission. If the Divestiture Trustee is unable to enter such agreements, or if Commission does not approve such agreements, or does not approve a divestiture subject to such agreements, the Commission may approve, and the Divestiture Trustee may divest, a divestiture of the Ausimont - New Jersey Fluoropolymers Business without such agreements.

- E. Respondent shall comply with all terms of the Divestiture Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Trustee Agreement, any modification of the Divestiture Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any

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other change in the corporation that may affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondent has fully complied with the provisions of Paragraphs II. and V. of this Order, Respondent shall submit to the Commission (with simultaneous copies to the Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and V. of this Order. Respondent shall include in the reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II.A., II.B. and II.C. of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent shall include in the reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and,
- B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

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VIII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of Respondent.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on June 21, 2012.

By the Commission.

**[Confidential Exhibits 1-3 Redacted From Public Record
Version]**

Order

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Solvay S.A. (“Solvay”) of certain voting securities of Ausimont S.p.A., and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Hold Separate and Maintain Assets (“Hold Separate”):

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1. Respondent Solvay S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Rue du Prince Albert, 33, B-1050 Brussels, Belgium. Respondent's wholly-owned subsidiary, Solvay America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3333 Richmond Avenue, Houston, Texas 77098.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

ORDER**I.**

IT IS HEREBY ORDERED that, as used in this Hold Separate, the following definitions shall apply:

- A. "Solvay" means Solvay S.A., a Belgian Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Solvay S.A., including Solvay America, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. "Ausimont" means Ausimont S.p.A., an Italian Corporation, and its parents, subsidiaries, divisions, groups, and affiliates controlled by Ausimont.
- C. "Alventia" means Alventia LLC, a limited liability company organized, existing and doing business under the laws of Delaware, and its subsidiaries and divisions, as well as groups and affiliates controlled by Alventia. Alventia does not include Dyneon LLC or Solvay.
- D. "Commission" means the Federal Trade Commission.

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- E. “Respondent” means Solvay S.A.
- F. “Acquirer” means each Person approved by the Commission to acquire the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business.
- G. “Acquisition” means the proposed acquisition of Ausimont by Solvay, as described in the December 21, 2001, Share Purchase Agreement between Montedison S.p.A., Longside International S.A. and Solvay S.A.
- H. “Actual Cost” means Respondent’s direct out-of-pocket expenses incurred in providing a service.
- I. “Asset Purchase Agreement” means all agreements submitted to and approved by the Commission between Solvay and the Acquirer that sell, assign, or otherwise convey the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business to one or two Acquirers.
- J. “Ausimont - New Jersey Fluoropolymers Business” means all of Solvay’s right, title, and interest acquired in the Acquisition in all assets and businesses in the world relating to the research, development, manufacture, marketing, sale, and distribution of PVDF at, from, and by the Ausimont Thorofare Plant, including, but not limited to:
 - 1. the Ausimont Thorofare Plant;
 - 2. the Ausimont Thorofare VF₂ Plant (subject to the proviso below)
 - 3. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research,

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development, manufacture, marketing, sale, and distribution of PVDF;

4. all personal property;
5. all intellectual property, including but not limited to Ausimont PVDF Production Information, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;
6. all contracts entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
7. all governmental approvals, consents, licenses, permits, waivers, or other authorizations;
8. all warranties and guaranties, express or implied;
9. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;
10. all customer purchase orders, customer product specifications and requirements, records of historical

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customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files;

11. all books, records, and files;
12. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies;
13. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods; and,
14. all items of prepaid expense.

Provided, however, that the Ausimont - New Jersey Fluoropolymers Business does not include: (a) the HCFC 142b manufacturing equipment located at the Ausimont Thorofare Plant; (b) any assets used exclusively in the research, development, manufacture or sale of fluoroelastomers or any other product unrelated to PVDF; and (3) those assets described in Confidential Exhibit 1.

- K. “Ausimont - New Jersey Fluoropolymers Employees” means all full-time, part-time, or contract employees of Solvay:
1. whose duties on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business directly or indirectly, wholly or in part, relate to the Ausimont - New Jersey Fluoropolymers Business;
 2. whose duties related primarily to the Ausimont - New Jersey Fluoropolymers Business at any time during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective

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Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business; or,

3. who performed duties that related directly or indirectly, wholly or in part, to the Ausimont - New Jersey Fluoropolymers Business for all or any part of a day for a cumulative one hundred (100) work days (whether consecutive days or not) during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business.

Provided, however, that Ausimont - New Jersey Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 2 (“Ausimont Retained Employees”).

- L. “Ausimont - New Jersey Fluoropolymers Key Employees” means any Ausimont - New Jersey Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within the Ausimont - New Jersey Fluoropolymers Business.
- M. “Ausimont PVDF Production Information” means all information relating to the past, present, planned, developed or researched production of each grade of PVDF, whether at the Ausimont Thorofare Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest pursuant to the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, all specifications for all products sold to all customers, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any

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other information which relates to past, present, planned, developed or researched production by Ausimont of any grades of PVDF in the ordinary course of business.

- N. “Ausimont Thorofare Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF.
- O. “Ausimont Thorofare VF₂ Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of VF₂.
- P. “Decatur PVDF Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Solvay and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or indirectly related to the research, development, manufacture, marketing, sale, and distribution of PVDF.
- Q. “Decatur VF₂ Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Alventia and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or indirectly related to the research, development, manufacture, marketing, sale, and distribution of VF₂.
- R. “Decision and Order” means:

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1. until the issuance of a final Decision and Order by the Commission, the proposed Decision and Order incorporated into and made a part of the Consent Agreement; or,
2. following the issuance of a final Decision and Order by the Commission, the Decision and Order issued by the Commission.

S. “Divestiture Agreements” means:

1. the Asset Purchase Agreement;
2. the Non-Exclusive PVDF Technology License;
3. the Non-Exclusive VF₂ Technology License;
4. Non-Exclusive Ausimont Technology License;
5. the Trademark License;
6. the Supplemental Rights Agreement; and,
7. any other agreements between Solvay and each Acquirer related to the divestiture.

T. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph V. of the Decision and Order.

U. “Effective Date of Divestiture” means the date on which the divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, to the Acquirer is consummated.

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- V. “HCFC-142b” means hydrochlorofluorocarbon 142b which, among other uses, is used as a raw material in the manufacture of VF_2 .
- W. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- X. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the date that the Acquisition is consummated and terminated pursuant to Paragraph VII. hereof.
- Y. “Monitor Trustee” means the trustee appointed pursuant to Paragraph IV. of this Order.
- Z. “Non-Exclusive VF_2 Technology License” means a non-exclusive, royalty free, fully assignable license, to the Acquirer, with the right to sub-license, to make, use, and sell VF_2 anywhere in the world using all of the intellectual property controlled by Solvay which relates to the research, development, manufacture or sale of VF_2 ; *provided, however,* the Non-Exclusive VF_2 Technology License shall not require Solvay or the Acquirer to provide or license to the other party to the Non-Exclusive VF_2 Technology License any improvements to any patents or other intellectual property granted, invented, researched, or developed after the Effective Date of Divestiture.
- AA. “Non-Public Ausimont - New Jersey Fluoropolymers Information” means any information relating to the Ausimont - New Jersey Fluoropolymers Business not in the public domain. Non-Public Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondent

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without reference to or use of Non-Public Information;
and (iii) information that is required to be disclosed by
law.

- BB. “Non-Public Solvay Fluoropolymers Information” means any information relating to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business not in the public domain. Non-Public Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information independently developed by Respondent without reference to or use of Non-Public Information; and (iii) information that is required to be disclosed by law.
- CC. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization or other entity.
- DD. “PVDF” means polyvinylidene fluoride, including homopolymers and copolymers.
- EE. “SFI” means Solvay Fluoropolymers, Inc., a wholly-owned subsidiary of Solvay.
- FF. “Solvay/Alventia HCFC-142b Agreement” means the agreement between Solvay and Alventia dated January 19, 1998 pursuant to which Solvay has agreed to provide HCFC-142b to Alventia.
- GG. “Solvay Fluoropolymers Business” means:
1. all of Solvay’s right, title, and interest in SFI, including, but not limited to:
 - a. the Decatur PVDF Plant;

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- b. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF;
- c. all patents owned by Solvay or SFI that are used exclusively for the purpose of manufacturing, selling, or using PVDF in the United States (“Decatur Patents”);
- d. all know-how relating to the manufacture, sale, and use of PVDF which is reflected in written or electronic records at the Decatur PVDF Plant or in the knowledge of Solvay Fluoropolymers Employees, including, but not limited to trade secrets, ongoing research and development, research materials, technical information, management information systems, information contained in management information systems, software, inventions, quality control data, test data, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;
- e. all contracts entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
- f. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Decatur PVDF Plant;
- g. all warranties and guarantees, express or implied, relating to the Decatur PVDF Plant;

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- h. all customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials;
 - i. all customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files relating to the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
 - j. all books, records, and files relating to SFI or the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
 - k. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies relating to the Decatur PVDF Plant;
 - l. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the Decatur PVDF Plant;
 - m. all items of prepaid expense relating to the Decatur PVDF Plant; and
 - n. any other tangible or intangible right, asset, or property relating to the Decatur PVDF Plant;
2. a non-exclusive, royalty free, fully assignable license, to the Acquirer (“Non-Exclusive PVDF Technology License”), with the right to sub-license, to make, use, and sell PVDF anywhere in the world using all Solvay PVDF Production Information and all other intellectual property (other than the SOLEF® trademark) used at any time by

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SFI or at the Decatur PVDF Plant, or at other Solvay plants and facilities, or relating to the research, development, manufacture or sale of PVDF, including, but not limited to, intellectual property and other intangible property related to PVDF grades sold by SFI manufactured at locations other than the Decatur PVDF Plant; *provided, however*, the Non-Exclusive PVDF Technology License shall not require Solvay or the Acquirer to provide or license to the other party to the Non-Exclusive PVDF Technology License any improvements to any patents or other intellectual property granted, invented, researched, or developed after the Effective Date of Divestiture.

3. a non-exclusive, royalty free, fully assignable, one-year license to the Acquirer to use the SOLEF® trademark in its marketing, sale, and distribution of PVDF (“Trademark License”);
4. a list of customers outside the United States who have purchased PVDF from Solvay within the three years preceding the Effective Date of Divestiture;
5. a copy of all vendor lists, catalogs, sales promotion literature, and advertising materials used by Solvay in connection with sales of PVDF to any Person outside of the United States within the three years preceding the Effective Date of Divestiture;
6. a copy of any computer software located anywhere in the world that relates to the research, development, manufacture, marketing, sale, or distribution of any substance, compound, or product manufactured at the Decatur PVDF Plant;
7. all machinery, equipment, testing equipment, and tools that: (a) are physically located at the Decatur PVDF Plant as of the Effective Date of Divestiture that relate to the

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research, development, manufacture, marketing, sale or distribution of PVDF at or by the Decatur PVDF Plant or SFI; or (b) at any time within one year of the Effective Date of Divestiture have been physically located at the Decatur PVDF Plant; and,

8. tangible or intangible assets located anywhere in the world that are used exclusively to, or have been used exclusively to, manufacture, market, sell, or distribute PVDF at or by the Decatur PVDF Plant or SFI.

Provided, however, that

- (a) Respondent may retain a list of the twenty (20) largest PVDF customers in the United States, as measured by volumes delivered in the United States, for each of the last three years;
- (b) Respondent may retain all contract rights and copies of files to the extent they are related solely to Solvay PVDF sales in the United States that have not been supplied by production from the Decatur PVDF Plant within twelve (12) months before the date this Order is accepted for public comment; and,
- (c) Solvay Fluoropolymers Business does not include any assets used exclusively in the research, development, manufacture or sale of fluoroelastomers or any other product unrelated to PVDF.

HH. “Solvay Fluoropolymers Employees” means:

1. all full-time, part-time, or contract employees of SFI at any time within one year of the Effective Date of Divestiture of the Solvay Fluoropolymers Business; and,
2. all full-time, part-time, or contract employees of Solvay (but excluding employees of SFI) the services of which, wholly or in part, were billed, paid, charged, or invoiced (to the extent such charges can be specifically identified) by or to SFI or Alventia at any time within one year of the Effective Date of Divestiture, but excluding those

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employees who provided legal, accounting or other purely administrative support to SFI.

Provided, however, that Solvay Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 3 (“Solvay Retained Employees”).

- II. “Solvay Fluoropolymers Hold Separate Trustee” means the Solvay Fluoropolymers Hold Separate Trustee appointed pursuant to Paragraph III. of this Hold Separate.
- JJ. “Solvay Fluoropolymers Key Employees” means any Solvay Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within SFI.
- KK. “Solvay Fluoropolymers Manager” means an individual with experience in the management, sales, marketing, and financial operations of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, who is appointed by the Respondent and approved by the Solvay Fluoropolymers Hold Separate Trustee to manage the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business during the Hold Separate Period.
- LL. “Solvay PVDF Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of PVDF, whether at the Decatur PVDF Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest, other than through the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to

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past, present, planned, developed, or researched production by Solvay of any grades of PVDF in the ordinary course of business. Solvay PVDF Production Information does not include the supercritical carbon dioxide technology that Solvay has licensed from the University of North Carolina and the know-how defined in Definition I.V.(1).(d).

MM. “Solvay VF₂ Joint Venture Business” means Respondent’s ownership interest in Alventia, including any other interests or rights of Solvay associated with Solvay’s ownership in Alventia.

NN. “VF₂” means vinylidene fluoride monomer.

II.**IT IS FURTHER ORDERED THAT:**

- A. During the Hold Separate Period, Respondent shall (i) hold the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business as a separate and independent business as required by this Hold Separate, except to the extent that Respondent must exercise direction and control over the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business to assure compliance with this Hold Separate, or with the Decision and Order, and except as otherwise provided in this Hold Separate, and (ii) shall vest the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business with all powers and authorities necessary to conduct its business.
- B. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers

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Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any leases or licenses that expire or terminate prior to the Effective Date of Divestiture.

- C. The purpose of this Hold Separate is to: (i) preserve the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business as viable, competitive, and ongoing businesses, independent of Respondent, until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business Assets; (ii) preserve the Ausimont - New Jersey Fluoropolymers Business as a viable, competitive, and ongoing business until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business; (iii) assure that no Material Confidential Information is exchanged between Respondent and the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, except as otherwise provided in this Hold Separate; and (iii) prevent interim harm to competition pending divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business.

III.

IT IS FURTHER ORDERED THAT:

- A. Rajiv Gupta is hereby appointed to serve as the Solvay Fluoropolymers Hold Separate Trustee. The Solvay Fluoropolymers Hold Separate Trustee may be the same Person as the Divestiture Trustee or the Monitor Trustee.

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- B. The Solvay Fluoropolymers Hold Separate Trustee shall monitor Respondent's compliance with this Hold Separate, and shall have all powers and authority necessary to effectuate his or her responsibilities pursuant to this Hold Separate and shall have the rights, duties and responsibilities described below:
1. No later than ten (10) days after the execution of the Consent Agreement, Respondent shall execute a Solvay Fluoropolymers Hold Separate Trustee Agreement that, subject to the approval of the Commission, transfers to the Solvay Fluoropolymers Hold Separate Trustee all rights, powers and authorities contained in the Consent Agreement or necessary to permit the Solvay Fluoropolymers Hold Separate Trustee to perform his or her duties and obligations pursuant to this Hold Separate and the Decision and Order.
 2. No later than one (1) day after the commencement of the Hold Separate Period, Respondent shall transfer to the Solvay Fluoropolymers Hold Separate Trustee all rights, powers, and authorities necessary to permit the Solvay Fluoropolymers Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.
 3. The Solvay Fluoropolymers Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order, for monitoring the organization of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business; for managing the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business through the Solvay Fluoropolymers Manager; for maintaining the independence of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business; and for assuring Respondent's

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compliance with its obligations pursuant to this Hold Separate and the Decision and Order.

4. The Solvay Fluoropolymers Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, or to any other relevant information of the Respondent relating to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, or to any other relevant information relating to Respondents' obligations under the Decision and Order and/or under this Hold Separate, as the Solvay Fluoropolymers Hold Separate Trustee may reasonably request. Respondent shall develop such financial or other information as the Solvay Fluoropolymers Hold Separate Trustee may reasonably request and shall cooperate with the Solvay Fluoropolymers Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Solvay Fluoropolymers Hold Separate Trustee's ability to perform his or her responsibilities consistent with the terms of this Hold Separate or to monitor Respondent's compliance with this Hold Separate or the Decision and Order.
5. The Solvay Fluoropolymers Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonable and necessary to carry out the Solvay Fluoropolymers Hold Separate Trustee's duties and responsibilities. The Solvay Fluoropolymers Hold Separate Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

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6. The Commission may require the Solvay Fluoropolymers Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission, and Material Confidential Information received from Respondent, in connection with the performance of the Solvay Fluoropolymers Hold Separate Trustee's duties.
7. The Respondent may require the Solvay Fluoropolymers Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, to anyone other than the Commission. However, nothing herein shall be construed to inhibit the communication of any Material Confidential Information between the Solvay Fluoropolymers Hold Separate Trustee and the individuals contemplated for the employment relationships provided for in subparagraph B.5. of this Paragraph III.
8. If the Solvay Fluoropolymers Hold Separate Trustee ceases to act or fails to act diligently and consistently with the purposes of this Hold Separate, the Commission may appoint a substitute Solvay Fluoropolymers Hold Separate Trustee. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Solvay Fluoropolymers Hold Separate Trustee within ten (10) business days after receipt of written notice from the Commission's staff to Respondents of the identity of any proposed Solvay Fluoropolymers Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed Solvay Fluoropolymers Hold Separate Trustee.

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- C. No later than ten (10) days after the execution of the Solvay Fluoropolymers Hold Separate Trustee Agreement, Respondent shall, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee, enter into a management agreement with, and transfer to the Solvay Fluoropolymers Manager all rights, powers, and authorities necessary to permit the Solvay Fluoropolymers Manager to perform his or her duties and responsibilities, pursuant to the Hold Separate and consistent with the purposes of the Decision and Order.
1. The Solvay Fluoropolymers Manager, in his or her capacity as such, shall report directly and exclusively to the Solvay Fluoropolymers Hold Separate Trustee, and shall manage the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business independently of the management of Respondent. The Solvay Fluoropolymers Manager shall not be involved in any way in the operations of the Respondent's businesses (other than the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business) during the Hold Separate Period.
 2. The Solvay Fluoropolymers Manager shall sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business to anyone other than the Solvay Fluoropolymers Hold Separate Trustee and the Commission.
 3. In the event the Solvay Fluoropolymers Manager ceases to act in his or her capacity as such, then Respondent shall select a substitute Solvay Fluoropolymers Manager, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee, and transfer to the substitute Solvay Fluoropolymers Manager all rights, powers and authorities necessary to permit the substitute Solvay

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Fluoropolymers Manager to perform his or her duties and responsibilities, pursuant to this Hold Separate.

4. Respondent shall not change the composition of the management of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business except that the Solvay Fluoropolymers Manager shall be permitted to remove management employees for cause subject to approval of the Solvay Fluoropolymers Hold Separate Trustee. The Solvay Fluoropolymers Hold Separate Trustee shall have the power to remove the Solvay Fluoropolymers Manager for cause. Within fifteen (15) days after such removal, Respondent shall appoint a replacement for the Solvay Fluoropolymers Manager, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee in the same manner as provided in Paragraph III. of this Hold Separate.
5. The Solvay Fluoropolymers Manager shall have no financial interests affected by Respondent's revenues, profits or profit margins, except that the Solvay Fluoropolymers Manager's compensation for managing the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business may include economic incentives dependent on the financial performance of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business if there are also sufficient incentives for the Solvay Fluoropolymers Manager to operate the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business at no less than current rates of operations (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate. For a period of two (2) years beginning after the termination of this Hold Separate, Respondent shall not retain the services of the Solvay Fluoropolymers Manager.

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6. The Solvay Fluoropolymers Manager shall make no material changes in the present operation of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business except with the approval of or at the instruction of the Solvay Fluoropolymers Hold Separate Trustee.
 7. In addition to the Solvay Fluoropolymers Employees, the Solvay Fluoropolymers Manager shall employ such employees as are reasonably necessary to assist the Solvay Fluoropolymers Manager in managing the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balances scorecard, expense, volume, shared services reporting) customer relations personnel and marketing administration personnel. For a period of two (2) years beginning after the termination of this Hold Separate, Respondent shall not retain the services of any Persons employed by the Solvay Fluoropolymers Manager to assist in the management of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business under this Hold Separate.
- D. Respondent shall assure that the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business are staffed with employees sufficient to maintain the marketability, viability, and competitiveness of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business. Solvay Fluoropolymers Employees shall include (i) all Solvay Fluoropolymers Employees employed by Solvay as of the date the Commission accepts the Consent Agreement for public comment; and, (ii) those persons hired from other sources. The Solvay Fluoropolymers Manager, with the

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approval of the Solvay Fluoropolymers Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business since March 1, 2001. To the extent that Solvay Fluoropolymers Employees leave the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business prior to the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, the Solvay Fluoropolymers Manager, with the approval of the Solvay Fluoropolymers Hold Separate Trustee, shall use reasonable efforts to replace the departing Solvay Fluoropolymers Employees with persons who have similar experience and expertise.

1. Respondent shall cause the Solvay Fluoropolymers Manager and each Solvay Fluoropolymers Employee with managerial responsibilities having access to Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business to sign an agreement to maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business. These persons shall not be involved in any way in the management, sales, marketing, and financial operations of products of Respondent that compete with the products of the Solvay

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Fluoropolymers Business or the Solvay VF₂ Joint Venture Business.

2. No later than ten (10) days after the execution of the Solvay Fluoropolymers Hold Separate Trustee Agreement, Respondent shall establish written procedures, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee, covering the management, maintenance, and independence of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business consistent with the provisions of this Hold Separate.
 3. No later than one (1) business day after the commencement of the Hold Separate Period, Respondent shall circulate to the Solvay Fluoropolymers Employees and to Respondent's employees who are responsible for the operation of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the research, development, manufacture, distribution, marketing or sale of PVDF, a notice of this Hold Separate and Consent Agreement, in the form attached as Attachment A.
- E. The Solvay Fluoropolymers Hold Separate Trustee and the Solvay Fluoropolymers Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms and conditions commensurate with the person's experience and responsibilities.
- F. Respondent shall indemnify the Solvay Fluoropolymers Hold Separate Trustee and the Solvay Fluoropolymers Manager, and hold the Solvay Fluoropolymers Hold Separate Trustee and the Solvay Fluoropolymers Manager harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Solvay Fluoropolymers Hold Separate Trustee's or the Solvay Fluoropolymers Manager's duties,

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including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Solvay Fluoropolymers Hold Separate Trustee or the Solvay Fluoropolymers Manager.

- G. Respondent shall provide the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business with sufficient financial resources:
1. as are appropriate in the judgment of the Solvay Fluoropolymers Hold Separate Trustee to operate the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, and at no less than current rates of operation (including, but not limited to, current rates of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, production and sales) and at no less than the rates of operation projected in the business plans of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business as of January 1, 2002 (including, but not limited to, the rates of operation projected in the business plans); provided that the failure to achieve production or sales goals projected in Respondent's business plans shall not be deemed to be a violation of this Hold Separate;
 2. to continue, at least at their scheduled pace, any additional expenditures for the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business authorized prior to the date the Consent Agreement is executed;

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3. to perform all ordinary and necessary maintenance to, and replacements of, assets of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business;
 4. to maintain the viability, competitiveness, and marketability of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business until the Effective Date of Divestiture, provided neither the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, nor the Ausimont - New Jersey Fluoropolymers Business may assume any new long-term debt, except as necessary to meet a competitive threat and, with respect to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, as approved by the Solvay Fluoropolymers Hold Separate Trustee; and,
 5. such financial resources to be provided to the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that consistent with the purposes of the Decision and Order, the Solvay Fluoropolymers Hold Separate Trustee may reduce the scale or pace of any capital or research and development project, or substitute any capital or research and development project for another of the same cost.
- H. Respondent shall, at the option of the Solvay Fluoropolymers Manager, and with the approval of the Solvay Fluoropolymers Hold Separate Trustee, continue to provide the same support services to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business as are being provided to such assets

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and business as of the date Respondent executes the Consent Agreement; provided:

1. Respondent may charge the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business the same fees, if any, charged by Respondent for such support services as of the date Respondent executes the Consent Agreement; and,
2. Respondent shall ensure that all personnel providing such support services retain and maintain all Material Confidential Information relating to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business on a confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's businesses (other than the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business). Such personnel shall also be required to execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business.

Nothing herein shall require Respondent to hold separate the operations, assets or personnel used to provide the following support services to the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business during the Hold Separate Period, provided that Respondents adhere to the confidentiality obligations contained herein:

- (1) Public affairs/media relations services;
- (2) Legal services;
- (3) Preparation of tax returns and other audit services;
- (4) Information systems services, including construction, maintenance and support of all SAP and other computer systems;

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- (5) Medical services, including drug testing;
 - (6) Processing of accounts payable;
 - (7) Security services;
 - (8) Technical support;
 - (9) Financial accounting services;
 - (10) Engineering services, including engineering, design and maintenance of plants and terminals;
 - (11) Real estate services, including the identification and development of new site;
 - (12) Procurement of goods and services utilized in the ordinary course of business by the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business;
 - (13) Human resources and Employee Benefits; and
 - (14) Transportation and other logistics services.
3. Except as provided in this Hold Separate and the Decision and Order, Respondent shall not employ or make offers of employment to any Solvay Fluoropolymers Employee during the Hold Separate Period. The Acquirer of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business shall have the option of offering employment to the Solvay Fluoropolymers Employees pursuant to the terms of the Decision and Order. After the Hold Separate Period and subject to Respondent's obligations under the Order, Respondent may offer employment to the Solvay Fluoropolymers Employees who have not been offered employment or have been terminated by the Acquirer. Respondent shall not interfere with the employment of the Solvay Fluoropolymers Employees by the Acquirer; shall not offer any incentive to said employees to decline employment with the Acquirer or accept other employment with Respondent; and shall remove any impediments that may deter Solvay Fluoropolymers Employees from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other

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contracts with the Solvay Fluoropolymers Employees that would affect the ability of the Solvay Fluoropolymers Employees to be employed by the Acquirer of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business.

4. For a period of one (1) year commencing on the Effective Date of Divestiture of the Assets to Be Divested, Respondent shall not employ or make offers of employment to any Solvay Fluoropolymers Employees who have been offered employment with the Acquirer, unless such individuals have been terminated by the Acquirer.
5. Notwithstanding subparagraph III.H.3., Respondent shall offer a bonus or severance, equal to five (5) percent of the employee's annual salary, to those Solvay Fluoropolymers Employees who continue their employment with the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, in addition to any other bonus or severance to which the Solvay Fluoropolymers Employees would otherwise be entitled.
6. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, the Solvay Fluoropolymers Hold Separate Trustee, the Solvay Fluoropolymers Manager, or any of its operations; provided, however, that Respondent may exercise only such direction and control over the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business as are necessary to assure compliance with this Hold Separate or the Consent Agreement, or with all applicable laws including, in consultation with the Solvay Fluoropolymers Hold Separate Trustee,

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continued oversight of the Solvay Fluoropolymers Business' and the Solvay VF₂ Joint Venture Business' compliance with policies and standards concerning the safety, health, and environmental aspects of their operations and the integrity of their financial controls; and Respondent shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business.

7. Except for the Solvay Fluoropolymers Manager, the Solvay Fluoropolymers Hold Separate Trustee and except to the extent provided in this Paragraph III., Respondent shall not permit any Person who is not an employee, officer or director of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business to be involved in the operations of the Solvay Fluoropolymers Business or the Solvay VF₂ Joint Venture Business.

IV.

IT IS FURTHER ORDERED THAT:

- A. Respondent shall maintain the viability, marketability, and competitiveness of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, and shall not cause the wasting or deterioration of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, nor shall they cause the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber or otherwise impair the viability, marketability or competitiveness of the Solvay Fluoropolymers Business, the Solvay VF₂

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Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business. Respondent shall comply with the terms of this subparagraph IV.A. until such time as Respondent or the Divestiture Trustee have divested the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business pursuant to the terms of the Decision and Order. Respondent shall conduct the business of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business in the regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, in the ordinary course of business and in accordance with past practice. Respondent shall use its best efforts to keep the organization and properties of the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Solvay Fluoropolymers Business, the Solvay VF₂ Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business.

- B. Until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, Respondent shall ensure that the Solvay Fluoropolymers Employees and the Ausimont - New Jersey Fluoropolymers Employees continue to be paid their salaries, all current and accrued bonuses, pensions and other

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current and accrued benefits to which such employees would otherwise have been entitled.

- C. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest assets pursuant to the Decision and Order contained in the Consent Agreement and engaging in related due diligence, or complying with this Hold Separate or the Decision and Order contained in the Consent Agreement, Respondent shall not receive or have access to, or use or continue to use, any Non-Public Solvay Fluoropolymers Information. Nor shall the Solvay Fluoropolymers Manager or the Solvay Fluoropolymers Employees (excluding support services employees involved in providing support to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business pursuant to this Paragraph IV. receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Respondent and relating to Respondent's businesses except such information as is necessary to maintain and operate the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business. Respondent may receive, on a regular basis, aggregate financial information relating to the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business necessary to allow Respondents to prepare United States consolidated financial reports and tax returns. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.
- D. Within thirty (30) days after commencement of the Hold Separate Period and every sixty (60) days thereafter until the Hold Separate terminates, the Solvay Fluoropolymers Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the

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purposes of this Hold Separate. Included within that report shall be the Solvay Fluoropolymers Hold Separate Trustee's assessment of the extent to which the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business is meeting (or exceeding) projected goals as reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Hold Separate.

VI.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to their principal United States offices, Respondents shall permit any duly authorized representatives of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of Respondent relating to compliance with this Hold Separate; and,
- B. Upon five (5) days notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

Order

VII.

IT IS FURTHER ORDERED that this Hold Separate shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or,
- B. the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF₂ Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, as required by the Decision and Order contained in the Consent Agreement.

By the Commission.

Order

ATTACHMENT A**NOTICE OF DIVESTITURE AND REQUIREMENT FOR
CONFIDENTIALITY**

Solvay S.A., hereinafter referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets. As used herein, the term “Solvay PVDF and VF₂ Business” means all of Respondent’s right, title, and interest in Solvay Fluoropolymers, Inc., including the PVDF production plant at Decatur, Alabama, and in Alventia LLC, and other rights related to the manufacture and sale of VF₂ anywhere in the world. In addition, as used herein the term “Ausimont PVDF and VF₂ Business” means all of Ausimont’s assets and businesses in the world relating to PVDF and VF₂, including the Ausimont PVDF and VF₂ plants at Thorofare, New Jersey. Additional information about the Consent Agreement, as well as a copy of the Consent Agreement and proposed order, can be found on the web site of the Federal Trade Commission at www.FTC.gov.

Under the terms of the Consent Agreement, if the Respondent fails to divest the Solvay PVDF and VF₂ Business within 180 days from the date upon which Solvay and Ausimont consummate the Acquisition, a trustee will be appointed to divest either the Solvay PVDF and VF₂ Business or the Ausimont PVDF and VF₂ Business.

The Solvay PVDF and VF₂ Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondent, including but not limited to Ausimont, until the Solvay PVDF and VF₂ Business is divested. All competitive information relating to the Solvay PVDF and VF₂ Business must be retained and maintained by the persons involved in the operation of the Solvay PVDF and VF₂ Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise

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furnishing any such information to or with any other person whose employment involves any other business of the Respondent, including but not limited to Ausimont. Similarly, persons involved in similar activities at Solvay or Ausimont shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Solvay PVDF and VF₂ Business.

Until either the Solvay PVDF and VF₂ Business or the Ausimont PVDF and VF₂ Business is divested, Solvay must take such actions as are necessary to maintain the viability and marketability of the Solvay PVDF and VF₂ Business and the Ausimont PVDF and VF₂ Business, to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any leases or licenses that expire or terminate prior to the Effective Date of Divestiture.

Any violation of the Consent Agreement may subject Respondent to civil penalties and other relief as provided by law.

Analysis

Analysis to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Solvay S.A. (“Solvay” or the “Respondent”). The Consent Agreement is intended to resolve anticompetitive effects stemming from Solvay’s proposed acquisition of Ausimont S.p.A. (“Ausimont”) from Italenergia S.p.A. The Consent Agreement includes a proposed Decision and Order (the “Order”) which would require Respondent to divest Solvay’s U.S. polyvinylidene fluoride (“PVDF”) operations (the “Solvay Fluoropolymers Business”), including its Decatur, Alabama plant and its interest in the Alventia LLC joint venture, which manufactures the main raw material for PVDF. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets which requires Respondent to preserve the Solvay Fluoropolymers Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Solvay’s proposed acquisition of Ausimont may have substantially lessened competition in two markets: PVDF, and melt-processible PVDF. The Commission has reason to believe that Solvay’s proposed acquisition of Ausimont would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission’s proposed complaint, there are two relevant lines of commerce in which to analyze the effects of Solvay’s proposed acquisition of Ausimont: the production and sale of all grades of PVDF; and the production and sale of melt-processible grades of PVDF. PVDF is a fluoropolymer used in a wide variety of applications, including highly durable architectural coatings, wire and cable jacketing, fiber optic raceways, chemical processing equipment, semiconductor manufacturing equipment, and other miscellaneous applications. The melt-processible grades include all PVDF grades except those used in coatings.

Analysis

The proposed complaint alleges that the markets for PVDF and melt-processible PVDF are highly concentrated, and that the proposed acquisition of Ausimont by Solvay would increase concentration in those markets. The proposed complaint also alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Producers employ proprietary technology to manufacture PVDF, and new entry would likely require entry into the production of VF_2 , which is a necessary raw material to produce PVDF. Entry would likely take as long as three years.

The proposed complaint alleges that Solvay's acquisition of Ausimont would lessen competition by making coordinated interaction among the remaining producers more likely. The proposed complaint alleges that the acquisition would leave only two significant PVDF producers, that reliable pricing information is available from customers, and that the large number of customers in the industry would make cheating on any coordination easy to detect. The proposed complaint further alleges that Ausimont has been expanding its sales of melt-processible PVDF, and that the acquisition would limit the growing competition between Solvay and Ausimont in melt-processible grades of PVDF.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the market for PVDF and melt-processible PVDF by requiring the divestiture of Solvay's fluoropolymers business in the U.S. That business includes Solvay's PVDF manufacturing plant in Decatur, Alabama, and its interest in Alventia LLC ("Alventia"), a VF_2 manufacturing joint venture. As part of the divestiture, the proposed Order would also require Solvay to provide to the Acquirer of the Solvay PVDF business a royalty-free license to Solvay's intellectual property, including detailed information about Solvay's production of PVDF at both of Solvay's two plants, in Alabama and France. The scope of the license would allow the acquirer to manufacture or sell PVDF anywhere in the world. The proposed Order would further require the Respondent to divest other assets related to the

Analysis

Solvay PVDF business, including real property, customer lists, contracts, patents, inventories, and other intangible assets and goodwill used to operate the business.

The proposed Order requires that Respondent divest the Solvay Fluoropolymers Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which Solvay consummates its acquisition of Ausimont. The proposed Order also provides that if Solvay does not complete its divestiture within that period, the Commission may appoint a Divestiture Trustee to divest the Solvay Fluoropolymers Business in a manner acceptable to the Commission, or may require divestiture of Ausimont's PVDF business, including its VF₂ and PVDF manufacturing operations in Thorofare, New Jersey. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Solvay's compliance with the terms of the proposed Order and the divestiture agreements that Solvay enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that is also included in the Consent Agreement requires that Respondent hold separate and maintain the viability of Solvay's PVDF business as a viable and competitive operation, and to maintain the viability of Ausimont's PVDF business, until either business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Respondent and the Solvay PVDF business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the PVDF market pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Respondent's compliance with the Order to Hold Separate and Maintain Assets.

Analysis

The proposed Order requires Respondent to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which the Respondent intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Respondent to provide the Commission with a report of compliance with the Order every thirty (30) after the date when the Order becomes final until the divestiture has been completed.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Hold Separate and Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.

Response to Petition

January 16, 2002

Thomas C. Willcox, Esquire
601 Indiana Avenue, N.W.
Suite 500
Washington, D.C. 20004

Re: Superior Court Trial Lawyers' Association
Docket No. 9171

Dear Mr. Willcox:

This is in response to the September 20, 2001 petition ("Petition") filed on behalf of respondent Superior Court Trial Lawyers' Association ("SCTLA") for reopening and modification, or interpretation, of the Federal Trade Commission's order in Docket No. 9171 (the "Order").¹ The Petition requests the Commission to reopen and modify, or interpret, the Order to allow a collective work-stoppage ("Proposed Boycott") directed at the timing of payments to its members. As explained below, SCTLA has not shown that the Order can or should be interpreted so narrowly. Further, SCTLA has not made a satisfactory showing that the public interest requires reopening the Order to modify it to permit SCTLA lawyers to plan and engage in such collective work-stoppage. Therefore, the Commission has denied SCTLA's Petition.²

¹ *Superior Court Trial Lawyers' Association*, 107 F.T.C. 510, 603-05 (1986).

² The Petition does not assert that any changed condition of fact or law requires reopening, and the Commission has not considered that issue.

Response to Petition

In the summer of 1983, SCTLA, its officers, members, and other lawyers (Criminal Justice Act, or “CJA,” lawyers) agreed to stop providing legal services to the District of Columbia for indigent criminal defendants, until the District increased the fees it paid for such services. The Commission issued a complaint challenging that conduct and, following an administrative trial and appeal, issued its Order to Cease and Desist on June 23, 1986.³ On appeal, the Supreme Court in 1990 held that SCTLA’s collective boycott was illegal *per se*.⁴ Following the Supreme Court’s decision, the Commission’s Order prohibiting collective action by SCTLA was affirmed and enforced by the D.C. Circuit.⁵ SCTLA asserts that it has complied with the Order without incident for 10 years.

SCTLA alleges that it is now faced with a new situation again requiring collective action. The District of Columbia Superior Court (“D.C. Courts”) has experienced two “compensation crises” during which D.C. Courts indefinitely suspended payments to CJA lawyers. SCTLA asserts that D.C. Courts’ temporary suspension of payments on actually authorized CJA vouchers constitutes breach of contract or other unlawful activity. As a result, SCTLA wishes to consider the option of a collective work-stoppage of the CJA indigent appointments process to protest potential indefinite suspensions of payments.⁶

³ Order, 107 F.T.C. at 603-05.

⁴ *Federal Trade Commission v. Superior Court Trial Lawyers’ Association*, 493 U.S. 411, 436 (1990).

⁵ *Superior Court Trial Lawyers’ Association v. Federal Trade Commission*, 897 F.2d 1168 (D.C. Cir. 1990).

⁶ Petition at 1.

Response to Petition

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), provides that the Commission may modify an Order when the Commission determines that the public interest so requires. In the case of “public interest” requests, FTC Rule of Practice 2.51(b)⁷ requires the petitioner to make an initial “satisfactory showing” of how modification would serve the public interest before the Commission will determine whether to reopen an Order and consider all of the reasons for and against its modification.

A “satisfactory showing,” with respect to public interest requests, is one that makes a *prima facie* showing of legitimate public interest reasons justifying relief. A request to reopen and modify will not make out a “satisfactory showing” if it is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the reasons why the public interest would be served by the modification.⁸ To make this showing, the petitioner must demonstrate, for example, that there is a more effective or efficient way of achieving the purposes of the Order, that the Order in whole or part is no longer needed, or that there is some other clear public interest that would be served if the

⁷ 16 C.F.R. §2.51(b)

⁸ *Id.*

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Commission were to grant the requested relief.⁹ A public interest showing must be supported by evidence that is credible and reliable.¹⁰

If, after determining that the petitioner has made the required showing, the Commission determines to reopen the Order, the Commission will then consider and balance all of the reasons for and against modification.¹¹ In no instance does a decision to

⁹ Thus, a petitioner's mere assertion of competitive injury or disadvantage ordinarily will not constitute a "satisfactory showing" where the petitioner is unable to demonstrate how the proposed modification would promote effective competition or otherwise serve the broader public interest. *See, e.g., California & Hawaiian Sugar*, 119 F.T.C. 39, 44-45 (1995) (a petitioner cannot avoid order obligations just because its competitors are not so restricted; order was reopened and modified, however, to allow limited comparative claims that encouraged competition by enabling consumers to distinguish and choose among otherwise fungible products).

¹⁰ As explained in a prior amendment to Rule 2.51, "[r]equests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions are reliable. [The Rule] therefore specifically requires that petitioners provide one or more affidavits to support facts alleged in requests to reopen and modify orders. This [requirement] will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid petitioners in presenting meritorious cases This [requirement] specifies the procedural method for substantiating factual assertions." 53 Fed. Reg. 40,867 (Oct. 19, 1988).

¹¹ All information and material that the petitioner wishes the Commission to consider shall be contained in the request at the time of filing. 16 C.F.R. § 2.51(b).

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reopen an Order oblige the Commission to modify it,¹² and the burden remains on the petitioner in all cases to demonstrate why the Order should be reopened and modified. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission Orders.¹³

The Commission has considered SCTLA's Petition and supporting materials, as well as the Commission's Opinion and Final Order,¹⁴ and the Supreme Court's opinion in *Federal Trade Commission v. Superior Court Trial Lawyers' Association*.¹⁵

As an initial matter, SCTLA has not demonstrated that the Order should be narrowly interpreted as prohibiting its members from engaging in group boycotts only when the intent is to increase the hourly rate paid to CJA lawyers for their services. By its express terms, Paragraph I of the Commission's Order prohibits SCTLA and its members from "[r]efus[ing] to provide

¹² See *United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) (reopening and modification are independent determinations).

¹³ See *Federated Department Stores, Inc. v. Moitie*, 452 U.S. 394 (1981) (strong public interest considerations support repose and finality).

¹⁴ *Superior Court Trial Lawyers' Association*, 107 F.T.C. at 562-603 ("Opinion").

¹⁵ 493 U.S. 411 (1990). See also *Superior Court Trial Lawyers' Association v. Federal Trade Commission*, *supra* note 5 (on remand from the Supreme Court, the Court of Appeals considered whether "the Commission's Order was overly broad and not reasonably related to the remedial purposes of the Federal Trade Commission Act," concluding that it was not and therefore enforcing the Commission's Order as originally drafted).

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legal services to any government program for persons eligible for appointed counsel in connection with any effort to *fix, increase, stabilize, or otherwise affect the level of fees* for such legal services.” 107 F.T.C. at 603 (emphasis added). As this language makes clear, the Commission’s Order was not narrowly limited to cover only naked price-fixing agreements pertaining to the dollar amount of hourly fees. Rather, the Order prohibits all group boycotts by SCTLTA attorneys having a connection with an effort to affect, in any manner, the level of such fees. *Id.*

The principal question raised by SCTLTA’s Petition, therefore, is whether the Proposed Boycott is sufficiently “connected” to an effort to “affect the level” of fees paid to CJA lawyers as to be prohibited by the Order. Upon analysis of this question, the Commission has concluded that the Proposed Boycott would squarely violate the terms of Paragraph I of the Order, inasmuch as an effect on the timing of payment of CJA fees is substantively no different from an effect on the dollar amount of the fees paid.

The Commission notes that the issue presented here is not a novel one. The federal courts previously have held that the timing and terms of payment for goods or services are functional elements of price and, for antitrust purposes, should be treated no differently from the dollar amount of the price itself. The seminal case for this proposition, a case not cited in SCTLTA’s Petition, is *Catalano, Inc. v. Target Sales, Inc.*, 446 U.S. 643 (1980) (cited with approval in *SCTLTA*, 493 U.S. at 424). In *Catalano*, the Supreme Court considered whether a horizontal restraint relating to credit terms offered to customers, but not otherwise affecting prices, should constitute a *per se* violation of Section 1 of the Sherman Act. Specifically, the case dealt with a secret agreement among competing beer wholesalers whereby each agreed “they would sell to retailers *only* if payment were made in advance of or upon delivery.” *Id.* at 644 (emphasis added). The participating wholesalers, in other words, agreed to refuse to deal with – that is,

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to boycott – any retailers who would not agree to pay in advance or upon delivery.

Although the lower court had ruled that this type of agreement should not be characterized as a form of price fixing, the Supreme Court disagreed and ultimately reversed. As the Court stated:

It is virtually self-evident that extending interest-free credit for a period of time is equivalent to giving a discount equal to the value of the use of the purchase price for that period of time. Thus, credit terms must be characterized as an inseparable part of the price. An agreement to terminate the practice of giving credit is thus tantamount to an agreement to eliminate discounts, and thus falls squarely within the traditional *per se* rule against price fixing.

Id. at 648.

Although the Proposed Boycott in this case is not identical to the restraint at issue in *Catalano*, the broader point made by the Court in *Catalano* seems very much apropos. Just as “credit terms must be characterized as an inseparable part of price” making an agreement to eliminate credit “tantamount” to price fixing, *id.*, the Commission believes that the timing of payment for legal services is, functionally speaking, an element of the rate paid for such services. Hence, in the Commission’s view SCTLA’s Proposed Boycott, even though it purportedly would not be designed to affect the set dollar amount paid to CJA lawyers for their hourly services, would nonetheless “affect the level of fees for such legal services,” 107 F.T.C. at 603, thus violating the express terms of the Commission’s Order.

Turning next to SCTLA’s request to reopen the Order, SCTLA has not made a satisfactory showing sufficient to warrant reopening the Order to consider a modification that would permit a collective boycott. SCTLA asserts that its Proposed Boycott is

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in the public interest because it would force D.C. Courts to make timely payments to SCTLA's members for their work representing indigent defendants. SCTLA argues that the public interest would be served because such an action would remedy alleged breaches of contract or other law violations by D.C. Courts and that the market for CJA lawyers will therefore be more competitive. SCTLA has not provided factual support for its assertions, however.

Significantly, SCTLA has not demonstrated any harm to competition from the Order's proscriptions. SCTLA has provided no credible or reliable evidence to support its contention that the 1998 and 1999 temporary suspensions of payment to CJA lawyers negatively impacted the market. The Petition fails to allege facts indicating that lawyers did not continue to compete for CJA appointments even through 1999, when another suspension occurred. Nor does the Petition indicate that there was any shortage of CJA lawyers from 1999 through the present. Lawyers seem to have taken CJA appointments in 1998 and through to the present, even in anticipation of indefinite suspensions of payment.

Similarly, SCTLA has not shown that there would be any competitive benefits from the Proposed Boycott. SCTLA submitted an economist's opinion stating that the Proposed Boycott is theoretically procompetitive.¹⁶ Based on this opinion, SCTLA argues that the Proposed Boycott is procompetitive because, by making the time of payment more certain, it "would facilitate competition on both price and total-compensation

¹⁶ SCTLA Memorandum of Law in Support of Petition, Exhibit C. Dr. Ratliff's economic opinion does not in this case constitute "credible and reliable evidence" as necessary for a "satisfactory showing" to reopen a Commission order.

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dimensions.”¹⁷ Other than this opinion, SCTLTA did not submit additional evidence or affidavits to support its contention.

SCTLTA asserts that the Proposed Boycott will benefit competition by making the time of payment more certain, because more lawyers will then be encouraged to accept CJA appointments. But the same might be said of a successful collective boycott to raise the specific level of fees, a position that was squarely rejected when the Supreme Court condemned such conduct as *per se* unlawful. In any event, and put more simply, to the extent the Petition is asserting that an increase in the value of the compensation would be procompetitive, it is making the same essential argument that was rejected when the Order was issued and affirmed on appeal.

Although SCTLTA has not made a satisfactory showing that the public interest requires reopening the Order, the Commission has nevertheless considered all the facts and arguments raised by SCTLTA to determine whether a modification of the Order would be warranted. In this case, the competitive costs that such a modification would impose would outweigh any benefits.

SCTLTA urges that making the timing of payments earlier and more certain would encourage more lawyers to accept CJA appointments. The Commission has already explained the fundamental flaw in this argument. Even if the evidence submitted with SCTLTA’s Petition were deemed credible and reliable, the Commission would nevertheless be compelled to deny the request to modify the Order on the basis that the competitive costs of a modification would outweigh any purported benefits.

¹⁷ *Id.* at ¶ 22. This argument also further confirms that the Proposed Boycott would be in connection with an effort to “affect the level of fees,” which is prohibited by the Order.

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The costs that would be incurred by permitting SCTLTA to engage in a concerted refusal to deal with the D.C. Courts have already been described in the Commission's Opinion.¹⁸ When SCTLTA's boycott succeeded in 1983, the District of Columbia's yearly CJA expenditures increased by \$4 to \$5 million, and the D.C. public defender attorneys were swamped by additional cases when they attempted to fill the market-void left by the boycott. If the Proposed Boycott were successful, it would similarly burden the District's criminal justice system and would thereby force the District to pay CJA lawyers when the lawyers wanted to be paid, rather than when payment would be made under normal competitive conditions in the CJA market.¹⁹

¹⁸ See Opinion, 107 F.T.C. at 567-69, 577-78.

¹⁹ See Initial Decision, 107 F.T.C. at 543, where the ALJ found that

[t]he expectation of the CJA lawyers was that their boycott would have a severe impact on the District's criminal justice system. This expectation was fully realized for essentially three reasons. First, the incidence of crime in the District does not subside because of the sudden unavailability of lawyers. Second, the criminal law requirements that a lawyer be assigned to each case almost immediately upon arrest of the accused and that the assigned lawyer's investigation and preparation proceed apace to meet certain early deadlines . . . are not changed either by the sudden nonavailability of enough lawyers or the imposition of massive caseloads on those who are available. Third, there was no one to replace the CJA regulars, and makeshift measures were totally inadequate.

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The Commission appreciates the concern of SCTLTA's members that they have not always been compensated as quickly as they might have desired. In that regard, however, SCTLTA is not left without recourse. The Order explicitly allows SCTLTA to exercise its First Amendment rights to petition the government concerning any procedures.²⁰ The Order also permits SCTLTA to provide information or views in a noncoercive manner to persons engaged in or responsible for the administration of the CJA program.²¹ Moreover, the D.C. Courts were made subject to the Prompt Payment Act in fiscal year 1999.²² Under this Act, D.C. Courts are required to pay interest on any voucher payment made more than 30 days after submission of a proper invoice.²³ Further, the

²⁰ Final Order, ¶ I.D.1., 107 F.T.C. at 604 (“*Provided*, That nothing in this order shall prevent respondents from: 1. Exercising rights under the First Amendment to the United States Constitution to petition any government body concerning legislation, rules or procedures”) (emphasis in original).

²¹ Final Order, ¶ I.D.2., 107 F.T.C. at 604 (“*Provided*, That nothing in this order shall prevent respondents from: . . . 2. Providing information or views in a noncoercive manner to persons engaged in or responsible for the administration of any program to obtain legal services for persons eligible for appointed counsel.”) (emphasis in original).

²² Pub. L. No. 105-277, § 162, 112 Stat. 2681-148 (1998), *see* 31 U.S.C. §§ 3901-07 (2001).

²³ *See D.C. Courts, Planning and Budgeting Difficulties During Fiscal year 1998*, United States General Accounting Office Report GAO/AIMD/OGC-99-226, at 3, 23 (Sept. 1999). The GAO’s recommendations are on pages 19-20 of the Report, which can be found at: <http://www.gao.gov/archive/1999/ag99226.pdf>, or at <http://www.gao.gov> by following the link to GAO Reports and

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D.C. Government has not ignored the issues raised by the D.C. Courts' temporary suspensions of payment. On June 2, 2000, the Council of the District of Columbia enacted the "Fiscal Year 2001 Budget Request Act," which requires the D.C. Courts to implement the recommendations in the Report from the General Accounting Office regarding payments to court-appointed attorneys.²⁴ The D.C. Council's enactments and the applicability of the Prompt Payment Act have remedied SCTLA's concerns to a great degree, without posing the competitive problems raised by SCTLA's proposed collective work-stoppage.

The Commission has duly considered SCTLA's Petition and the supporting submissions filed in connection therewith and other relevant information and has determined that SCTLA has failed to make a satisfactory showing that the public interest requires reopening the Order. Accordingly, SCTLA's Petition is denied.

By direction of the Commission.

entering the Report number <<AIMD/OGC-99-226>>.

²⁴ *Fiscal Year 2001 Budget Request Act*, 47 D.C. Reg. 5049, 5051-52 (2000).

Response to Petition

February 1, 2002

VIA FACSIMILE AND EXPRESS MAIL

Loree & Lord
Attention: Paige Loree Hensley, Owner
49 Cumberland Road
Fishkill, New York 12524-1438

Re: Petition of Loree & Lord to Quash Civil Investigative
Demand
Matter No. 0223011

Dear Ms. Hensley:

This letter advises you of the Federal Trade Commission's ruling on the above-referenced Petition to Quash ("Petition").¹ The decision was made by Commissioner Sheila F. Anthony, acting as the Commission's delegate. See 16 C.F.R. § 2.7(d)(4).

The Petition is **denied** for the reasons stated below. As also set forth below, the new deadline for Loree & Lord ("Petitioner") to respond to, and otherwise comply with, the Civil Investigative Demand ("CID") is **Friday, February 15, 2002**.

Loree & Lord has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this

¹ Petitioner has filed two documents. One is titled "Petition to Quash," dated November 26, 2001, and the other is titled "Motion to Dismiss Civil Investigative Demand Number 9923259," dated January 8, 2002. The latter document shall be treated as a supplement to the first, and the two together shall be referred to throughout this letter ruling as "Petition."

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letter. The filing of a request for review by the full Commission does not stay or otherwise affect the new return date -- February 15, 2002 -- unless the Commission rules otherwise. See 16 C.F.R. § 2.7(f).

I. BACKGROUND

Loree & Lord is (according to Petitioner “was”) engaged in the marketing and sale of certain bulk e-mailing products. In its advertisements, Loree & Lord makes various representations, including, but not limited to, representations regarding the utility of the products and their likelihood to increase the user’s earnings. The Commission is investigating whether any of these claims might violate the Federal Trade Commission Act.

The CID for documentary material was issued to Petitioner on November 13, 2001, pursuant to the Commission’s omnibus resolution of September 7, 1999. The resolution authorizes the use of compulsory process in a non-public investigation to determine whether unnamed Internet advertisers, sellers, and promoters may be engaged in acts or practices in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52 as amended, including but not limited to the deceptive advertising, selling, and promoting of any good or service in commerce on or through the World Wide Web, e-mail, newsgroups, or other portions of the Internet. The resolution also authorizes investigation to determine whether action to obtain redress of injury to consumers or others would be in the public interest. The CID specified a return date of November 28, 2001.

Rather than produce the documents specified in the CID, on November 26, 2001, Petitioner filed a document styled a “Petition to Quash.” The only argument set forth in that filing was a contention that the investigation was “moot” because the activity in question had ceased. Throughout December 2001, the FTC staff conducting the investigation attempted to persuade Petitioner to withdraw the Petition and comply with the CID. Staff, among other things, provided Petitioner with copies of advertisements

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and other documents that prompted several of the specifications set forth in the CID. Petitioner continued to refuse to comply, and instead, on January 8, 2002, filed a document styled as a “Motion to Dismiss Civil Investigative Demand Number 9923259.” This second filing, which the Commission shall treat as a supplement to the Petition to Quash, argued that the documents provided by staff “show no nexus to Loree & Lord and no injury.”

Commissioner Anthony has reviewed the Petitioner’s filings (referred to herein together as “Petition”). Nothing in those filings supports quashing or limiting the CID. While the Petition is in all likelihood procedurally deficient under Commission Rule 2.7, which sets forth the requirements for filing a petition to quash, it seems plain that these filings are not the work of an attorney. As an apparent *pro se* submission, the Commission will proceed directly to the substantive arguments and overlook the procedural issues at this time.

II. ANALYSIS

The Federal Trade Commission Act grants the Commission extensive investigatory powers. See 15 U.S.C. §§ 6, 9, 10, and 20. These powers are essential to allow the Commission to carry out its broad mandate. As the Supreme Court explained almost fifty years ago, an investigation by the Commission is “analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). Among the Commission’s investigatory powers is the ability to use civil investigative demands to gather information and the concomitant right to enforce those demands in the federal district courts. See 15 U.S.C. § 20.

A. Mootness

Petitioner first argues that it ceased selling the bulk e-mail products at issue on November 11, 2001, and therefore the

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investigation is moot. This argument is without merit. Even if Loree & Lord has now ceased making the claims or selling the product under investigation, as it contends, the fact remains that it apparently did make such claims and sell such product at one time. First, assuming those claims violated the law, the Commission may well desire an order ensuring that Loree & Lord and its principals cannot make similar claims in the future. Second, consumers that may have been injured by false, misleading, or unsubstantiated claims made at one point in time are not made whole by the cessation of those claims going forward. In short, the existence of a past law violation and the responsibility to make amends for such violation are not negated merely because the violative conduct is not continuing.

B. Nexus and Injury

In its supplemental filing, Petitioner argues that the copies of e-mail advertisements and related promotional materials provided by staff demonstrate “no nexus to Loree & Lord and no injury” While Petitioner’s filing is far from clear in its presentation, it appears that the company is arguing that the specific claims under investigation were not made by Loree & Lord and that staff has not demonstrated to Petitioner that any consumers were injured.

First, with respect to the injury issue, as explained above, the Commission does not need proof of injury in order to undertake an investigation. Rather, the Commission “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.” *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). Uncovering violations of the law, whether or not those violations have caused injury, is the mission of the FTC. The remedies for those violations may take many forms; for example, if no injury has yet occurred, a mere injunction may suffice, but if injury is found, consumer redress payments may be in order. The point is that the existence of

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injury is irrelevant to the Commission's authority to conduct an investigation.²

Second, with respect to the nexus issue, the documents provided by staff (attached as exhibits to Petitioner's supplemental filing) contain several references to Loree & Lord. Thus, on their face, they seem to show a "nexus." Petitioner's conclusory assertions to the effect that "unknown personnel" or a third party may have made the representations at issue or that the documents "contain products, services, or information that are distinctly not Loree & Lord's or Paige Loree Hensley's" do not provide a basis for quashing or limiting the CID, particularly where Petitioner appears to have endorsed or ratified the representations by referring potential purchasers to them. Petitioner's remedy is to respond to the CID and specify the basis for its belief that it did not make or ratify some or all of the representations about which the CID inquires.

III. CONCLUSION

For the foregoing reasons, the Petition is **denied**, and, pursuant to Rule 2.7(e), 16 C.F.R. § 2.7(e), **Petitioner is directed to**

² Petitioner also seems to suggest that the matter is moot because refunds have been provided to those customers who asked for one -- a variation on no injury. First, the Commission has the right to investigate to determine for itself what injury exists and whether such injury has been adequately redressed. Second, as noted above, harm is not a requisite for pursuing an investigation. Third, redress of consumer harm is only one of the remedies the Commission might demand in an enforcement action; for example, injunctive relief is extremely common. Finally, if the Commission declined to pursue investigations where those asking for refunds had received them, the floodgates would be open to fraud and abuse because, for numerous reasons, many consumer victims will not have *asked*. A relevant question in this regard would be whether all consumers who are *entitled* to redress have received it, as opposed to merely those who have managed to ask by a certain point in time.

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**comply with the Civil Investigative Demand on or before
Friday, February 15, 2002.**

By direction of the Commission.

Response to Petition

NONPUBLIC VERSION

June 18, 2002

S.S.T. Management, Inc. and Slim Down Solutions, LLC

through their counsel

Lewis Rose, Esquire

Elisa A. Nemiroff, Esquire

COLLIER SHANNON SCOTT, PLLC

3050 K Street, NW – Suite 400

Washington, D.C. 20007-5108

Re: Petition of S.S.T. Management, Inc. and Slim Down
Solutions, LLC toPartially Quash Civil Investigative Demands -- File No.
0223163

Dear Mr. Rose and Ms. Nemiroff:

This letter advises you of the Federal Trade Commission's ruling on the above-referenced Petition to Quash ("Petition"). The decision was made by Commissioner Sheila F. Anthony, acting as the Commission's delegate. See 16 C.F.R. § 2.7(d)(4).

The Petition is **denied** for the reasons stated below. The new deadline for S.S.T. Management, Inc. ("SST") and Slim Down Solutions, LLC ("SDS") (together "Petitioners") to respond to, and otherwise comply with, the Civil Investigative Demands ("CIDs") is **Friday, June 28, 2002**.

SDS has the right to request review of this matter by the full Commission. Such a request must be filed with the Secretary of the Commission within three days after service of this letter ruling. The filing of a request for review by the full Commission does not stay or otherwise affect the new return date – June 28, 2002 – unless the Commission rules otherwise. See 16 C.F.R. § 2.7(f).

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I. BACKGROUND

The Commission is investigating whether Petitioners have violated Sections 5 and 12 of the FTC Act by engaging in unfair or deceptive acts or practices in the advertising or marketing of their products and services, including, but not limited to their Slim Down Solution weight loss product. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest. See FTC “Resolution Directing Use of Compulsory Process in a Nonpublic Investigation of Unnamed Persons Engaged Directly or Indirectly in the Advertising or Marketing of Drugs, Devices, Dietary Supplements or Any Other Product or Service Intended to Provide a Health Benefit or to Affect the Structure or Function of the Body,” issued May 3, 2000 (“Resolution”).

Pursuant to the Resolution, on March 29, 2002, the Commission issued separate CIDs to SST and SDS. Each CID contained essentially identical document requests and interrogatories. Each CID also contained a copy of the above Resolution; as a consequence, Petitioners were fully apprised of “the purpose and scope of the investigation and of the nature of the conduct constituting the alleged violation . . . under investigation and the provisions of law applicable to such violation.” 16 C.F.R. § 2.6. On May 20, 2002, Petitioners filed a Partial Petition to Quash the CIDs, objecting to those specifications seeking recent corporate tax filings, annual gross revenue figures, and a breakdown of the number of gross unit sales and revenue by individual product or service. Petitioners assert that this information is irrelevant and immaterial to the Commission’s investigation and that the information is privileged and confidential. Notably, Petitioners’ conclusory assertions are unsupported by any factual or legal argument whatsoever.

Commissioner Anthony reviewed the Petition, and determined that it should be denied for several reasons. First, it was untimely filed with respect to the two original CIDs. Second, Petitioners’ legal arguments are meritless, unsupported, and directly

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contradicted by longstanding federal appellate court precedent, including one leading case in which Petitioners' counsel, Lewis Rose, participated. See *Invention Submission Corp. v. FTC*, 965 F.2d 1086 (D.C. Cir. 1992), *cert. denied*, 507 U.S. 910 (1993) (holding that a corporation's financial information is relevant to an FTC investigation of alleged unfair or deceptive acts or practices and could be sought in an administrative subpoena; Lewis Rose on brief for appellant).

II. ANALYSIS

A. The Petition Was Untimely.

Subsection (d)(1) of Rule 2.7 provides that petitions to quash must be filed with the Secretary "within twenty days after service . . . or, if the return date is less than twenty days after service, prior to the return date." 16 C.F.R. § 2.7(d)(1).

The CIDs were served on Petitioners via the United States Postal Service by Certified Express Mail. SST and SDS have the same mailing address. According to Postal Service records, both CIDs were delivered on April 3, 2002 at 12:14 p.m., and both were signed for by "H. Jankowski." Thus, any petitions to limit or quash were due no later than April 23, 2002. The Petition was not filed until almost one month later, on May 20, 2002.

Petitioners admit receiving the SST CID on April 3, 2002; thus the Petition is plainly untimely with respect to SST. Although counsel for SDS claims that the SDS CID was never received, the records of the United States Postal Service show that the two CIDs were delivered simultaneously and signed for by the same person at the Petitioners' address.

Nevertheless, in an effort to keep matters moving forward, the Commission sent a second identical CID to SDS on May 17, 2002, with a return date of May 20, 2002. With respect to this second CID delivered to SDS, the Petition was timely filed by the return date.

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B. The Requests for Financial Information are Relevant.

It is the respondent's burden to show that the information sought through administrative compulsory process is irrelevant. *Invention Submission Corp.*, 965 F.2d at 1090. Petitioners have failed to meet this difficult standard. Indeed, they have not even tried; their Petition asserts that the information is irrelevant, but offers neither explication nor legal authority to support this contention.

The Commission previously has ruled, and the courts have agreed, that an investigatory target's financial information is relevant to a law enforcement investigation. The leading case addressing this issue is *Invention Submission Corp. v. FTC*, 965 F.2d 1086 (D.C. Cir. 1992).¹ In the *Invention Submission* case, the target corporation argued that CIDs seeking its financial information, including income and annual sales, were irrelevant and unreasonable. The Commission ruled that the requested financial information was relevant, and the district court agreed. *FTC v. Invention Submission Corp.*, 1991-1 Trade Cas. (CCH) ¶ 69,338 at 65,353 (D.D.C. 1991), aff'd, 965 F.2d 1086 (D.C. Cir. 1992), cert. denied, 507 U.S. 910 (1993). The D.C. Court of Appeals affirmed, holding that the financial information sought was relevant to the investigation of alleged unfair or deceptive acts or practices under the FTC Act.² 965 F.2d at

¹ See also, *FTC v. American Buyers' Network Inc.*, 1991-2 Trade Cas. 69,551 at 66,443 (D. Colo.) (Aug. 19, 1991) (ordering production of corporate target's financial information as relevant, in part to verify other financial information already provided by the target); *Universal Training Services, Inc.*, Docket No. 9106, 1978 FTC Lexis 277 (Commission order requiring production of individual target's personal financial information sought in order to determine whether restitution is an appropriate remedy).

² Petitioners' counsel here, Lewis Rose, was on the brief for appellant *Invention Submission Corp.*, before the Court of Appeals for the D.C. Circuit in 1992, when the case was argued and decided.

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1089-90. It noted that financial data could facilitate the investigation “in different ways, not all of which may yet be apparent.” *Id.* at 1090. One example given by the court was that such information might help the Commission determine how to allocate its limited resources to protect the largest number of consumers possible. The court further stated that the Commission has no obligation to establish precisely the relevance of the material it seeks by tying that material to a particular theory of violation. *Id.*

C. Petitioners’ Confidentiality Claim is Meritless.

Petitioners contend that the tax returns, revenue figures, and sales data sought in the CIDs “[are] privileged and confidential commercial and financial information that is competitively sensitive.” This bald assertion provides absolutely no basis for quashing the specifications requesting the financial information.

As the district court in *FTC v. Invention Submission Corp.* succinctly explained:

Congress, in authorizing the Commission’s investigatory power, did not condition the right to subpoena information on the sensitivity of the

Undoubtedly, therefore, Mr. Rose is aware of the D.C. Circuit’s holding as well as the undeniable fact that Petitioners’ assertions here are identical to those considered and rejected by the court there. The Petition’s complete failure to address this leading precedent is both puzzling and damaging to the Petitioners’ position. To the extent Petitioners might be seeking to change the established law, it was incumbent upon their counsel to produce a brief containing factual and legal arguments supporting such a change. See 16 C.F.R. § 2.7 (d); Fed. R. Civ. P. 11(b). Anything less wastes the Commission’s limited resources and, of course, taxpayer dollars as well. Moreover, the absence of factual and legal arguments supporting a change in established law suggests that the Petition may have been filed merely to delay the production of important information.

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information sought. So long as the subpoena meets the requirements of the FTC Act, is properly authorized, and within the bounds of relevance and reasonableness, the confidential information is properly requested and [the subpoena] must be complied with.

1991-1 Trade Cas. (CCH) ¶ 69,338 at 65,353 (D.D.C. 1991), aff'd, 965 F.2d 1086 (D.C. Cir. 1992), cert. denied 507 U.S. 910 (1993).

More specifically, the Commission's conduct with regard to confidential information provided pursuant to compulsory process in a non-public investigation is controlled by a detailed set of statutes and rules, including Section 21 of the Federal Trade Commission Act, entitled "Confidentiality," 15 U.S.C. § 57b-2, and the Commission's "Nonpublic Material" regulation, 16 C.F.R. § 4.10. This set of laws and regulations, which are backed by criminal sanctions pursuant to 15 U.S.C. § 50; 16 C.F.R. 4.10(c), prescribes the rights and obligations of the Commission and of persons providing confidential information to the Commission, and consequently will comprehensively protect any confidential information that Petitioners might provide.

III. CONCLUSION

For all of the foregoing reasons, the Petition is **denied**, and, pursuant to Rule 2.7(e), 16 C.F.R. § 2.7(e), **Petitioners are directed to comply with the Civil Investigative Demand on or before Friday, June 28, 2002.**

By direction of the Commission.