

9710007
B247014

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

In the Matter of

Exxon Corporation,
a corporation,

The Shell Petroleum Company Limited,
a corporation,

and

Shell Oil Company,
a corporation.

DOCKET NO. C-3833

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed formation of a joint venture between Exxon Chemical Company, a division of Exxon Corporation, The Shell Petroleum Company Limited and Shell Oil Company, hereinafter sometimes referred to as the "respondents," and having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, 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 the respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Exxon Corporation is a corporation organized and existing under the laws of the State of New Jersey, having its principal offices at 5959 Las Colinas Boulevard, Irving, Texas 75039.
2. Respondent The Shell Petroleum Company Limited is a corporation organized under the laws of England, having its principal offices at Shell Centre, London SE1 7NA, England.
3. Respondent Shell Oil Company is a corporation organized and existing under the laws of the State of Delaware, having its principal offices at One Shell Plaza, Houston, Texas 77002.
4. 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 ORDERED that, as used in this Order, the following definitions shall apply:

A. “Exxon Corporation” means Exxon Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Exxon Corporation, and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each. For purposes of this Order, Exxon Corporation does not include the Joint Venture (as defined below).

B. “The Shell Petroleum Company Limited” means The Shell Petroleum Company Limited, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by The Shell Petroleum Company Limited, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. “Shell Oil Company” means Shell Oil Company, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Shell Oil Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

D. “Respondents” means Exxon Corporation, The Shell Petroleum Company Limited, and Shell Oil Company, individually and collectively.

E. “Commission” means the Federal Trade Commission.

F. “Chevron” means Chevron Chemical Company LLC, a subsidiary of Chevron Oil Company. Chevron is a limited liability company organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 6001 Bollinger Canyon Road, San Ramon, California.

G. “Chevron Agreement” means the *Purchase and Sale Agreement By And Between Chevron Chemical Company LLC, As Purchaser, And Exxon Chemical Company, A Division Of Exxon Corporation, As Seller, Regarding The Crankcase OCP VII Business of ECC’s Paramins Division*, dated May 14, 1998.

H. “Assets Identified in the Chevron Agreement” means the assets that Exxon Chemical Company, a division of Exxon Corporation, has agreed to sell, and Chevron has agreed to buy, as embodied in the Chevron Agreement.

I. “Vistalon” means the business unit of Exxon Chemical Company whose principal business is the design, manufacture, marketing, and sale of polymers, including, among other products, OCP Polymer for Viscosity Index Improver Applications.

J. “Joint Venture” means the joint venture or ventures to be formed between Exxon Corporation, The Shell Petroleum Company Limited and Shell Oil Company pursuant to the *Additives Joint Venture Agreement Among Exxon Chemical Company, A Division of Exxon Corporation, the Shell Petroleum Company Limited, and Shell Oil Company*, dated May 15, 1998.

K. “Consummation of the Joint Venture” means the earlier of (1) the closing date of the Joint Venture in the United States or (2) the commencement of joint manufacturing by the Joint Venture anywhere in the world.

L. “Viscosity Index Improver ” means products made from polymers or styrenics, including olefin co-polymers, that are added to lubricants, including motor oils, to modify the impact of changes in temperature on the viscosity of the lubricants.

M. “OCP-based Viscosity Index Improver” means Viscosity Index Improver products for crankcase applications that are made from olefin co-polymers (OCP).

N. “OCP Polymer for Viscosity Index Improver Applications” means commercially viable grades of olefin co-polymer manufactured by Vistalon, a business unit of Exxon Chemical Company, a division of Exxon Corporation, which have utility in Viscosity Index Improvers,

including, without limitation, current grades of olefin co-polymers designated Vistalon grades 457, 785, 703, 878P, and 878, MDV 91-9, and Exxelor grades 8900 and 8950.

O. “Paramins” means the business unit of Exxon Chemical Company, whose principal business is in the design, manufacture, marketing, and sale of fuel and lubricant additive products, including without limitation, Viscosity Index Improvers.

P. “Paratone” means the OCP-based Viscosity Index Improvers designed, manufactured, marketed and sold by Paramins.

Q. “Non-public Information” means material proprietary commercial or technical information related to Chevron’s Oronite Division, Vistalon products for OCP-based Viscosity Index Improvers, OCP-based Viscosity Index Improvers, or OCP Polymer for Viscosity Index Improver Applications. Non-public Information does not include: (1) information that falls within the public domain through no violation of this order by any respondent, (2) information to be retained by Exxon Corporation or to be transferred to the Joint Venture as permitted by the Chevron Agreement, (3) the residual knowledge of former Paramins employees who become employees of the Joint Venture, or (4) information relating to OCP polymer to the extent the polymer is used for applications other than Viscosity Index Improver.

R. “Chevron’s Oronite Division” means the division of Chevron Chemical Company LLC that manufactures and markets lubricant additives worldwide, with principal offices in Houston, Paris, and Singapore.

S. “Viscosity Index Improver Business” means Exxon Corporation’s business of developing and selling OCP-based Viscosity Index Improvers, and includes all assets used by Paramins in the research, development, manufacturing, marketing and sale of OCP-based Viscosity Index Improvers in North America and Europe, regardless of where the assets are located in the world, and regardless of whether included in the Chevron Agreement, including, without limitation, the following:

1. all trademarks, including the Paratone trademark, brand names, customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials;
2. all research materials, technical information, management information systems, software, inventions, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. all inventory of raw materials and finished goods;
4. all rights, titles and interests in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, personal property lessors,

personal property lessees, licensors, licensees, consignors and consignees to the extent that they apply to the Viscosity Index Improver Business;

5. all rights under warranties and guarantees, express or implied;
6. all books, records, files;
7. all items of prepaid expense; and
8. a supply of OCP Polymer for Viscosity Index Improver Applications on commercially reasonable terms;

provided that the Viscosity Index Improver Business shall not include (1) any manufacturing facilities owned and operated by either Vistalon or Paramins or (2) Paramins Lube Oil Flow Improver (“Paraflow”) and stabilizer (“Parabar”) products.

II

IT IS FURTHER ORDERED that:

- A. Exxon Corporation shall divest, within 6 months from the signing of this Agreement, absolutely and in good faith, either:
 1. the Assets Identified in the Chevron Agreement, to Chevron, in accordance with the Chevron Agreement, prior to the Consummation of the Joint Venture; or
 2. the Viscosity Index Improver Business to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission, prior to the Consummation of the Joint Venture.

The Joint Venture may be consummated upon the closing of the Chevron Agreement in the United States and in Europe.

- B. Pending divestiture of the Viscosity Index Improver Business, Exxon Corporation shall take such actions as are necessary to maintain the viability, competitiveness, and marketability of the Viscosity Index Improver Business and to prevent the destruction, removal, wasting, deterioration, or impairment of any assets or business of the Viscosity Index Improver Business except for ordinary wear and tear.
- C. In the event that the Commission notifies Respondents that Chevron is not an acceptable acquirer or that the Chevron Agreement is not an acceptable manner of divestiture, Exxon Corporation must rescind the Chevron transaction as provided in Paragraph 10 of this Agreement, and shall:

1. divest the Assets Identified in the Chevron Agreement to Chevron in a manner approved by the Commission;
 2. divest the Viscosity Index Improver Business to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; or
 3. abandon Consummation of the Joint Venture pursuant to Paragraph VIII.B.
- D. In the event that the Commission notifies Respondents that Chevron is not an acceptable acquirer or that the Chevron Agreement is not an acceptable manner of divestiture, and the Respondents consummate the Joint Venture, Exxon Corporation shall comply with all terms of the Agreement to Hold Separate, attached to this Order and made a part hereof as Appendix I. The Agreement to Hold Separate shall continue in effect until such time as Exxon Corporation has divested all the Viscosity Index Improver Business as required by this Order or until such other time as the Agreement to Hold Separate provides.
- E. If Exxon Corporation complies with its obligations under this part by selling the assets identified in the Chevron Agreement to Chevron, Exxon Corporation shall comply with all the terms of the Chevron Agreement, including all the ancillary agreements thereto. Respondents shall assure that the Joint Venture complies with the ancillary agreements that purport to bind the Joint Venture.
- F. Except as permitted pursuant to the Chevron Agreement or the agreement between Exxon Corporation and the acquirer of the Viscosity Index Improver Business, as approved by the Commission, Exxon shall not sell OCP Polymer for Viscosity Index Improver Applications to other customers including the Joint Venture.

III

IT IS FURTHER ORDERED that:

- A. If Exxon Corporation has not divested, absolutely and in good faith and with the Commission's prior approval, the Viscosity Index Improver Business within 6 months of the signing of this Agreement, then the Commission may appoint a trustee to divest the Viscosity Index Improver Business. The trustee shall have all rights and powers necessary to permit the trustee to effect the divestiture of the Viscosity Index Improver Business and to divest such ancillary assets, and to effect such arrangements, as necessary to assure the viability, competitiveness, and marketability of the Viscosity Index Improver Business so as to expeditiously accomplish the remedial purposes of this Order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission,

Exxon Corporation shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief (including, but not limited to, a court-appointed trustee) pursuant to the Federal Trade Commission Act or any other statute enforced by the Commission, for any failure by any of the Respondents to comply with this Order.

- B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, Exxon Corporation shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:
1. The Commission shall select the trustee, subject to the consent of Exxon Corporation, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Exxon Corporation has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Exxon Corporation of the identity of any proposed trustee, Exxon Corporation shall be deemed to have consented to the selection of the proposed trustee.
 2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Viscosity Index Improver Business, and shall have the power to divest such ancillary assets, and to effect such arrangements, as necessary to assure the viability, competitiveness, and marketability of the Viscosity Index Improver Business so as to expeditiously accomplish the divestiture required by this Order.
 3. Within ten (10) days after appointment of the trustee, Exxon Corporation shall execute a trust 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 trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.
 4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission (or, in the case of a court-appointed trustee, by the court) for an additional period not to exceed twelve (12) months; provided, however, the Commission may extend this period for no more than two (2) additional periods.
 5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the Viscosity Index Improver Business, or to any other relevant

- information, as the trustee may request. Exxon Corporation shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph III. in an amount equal to the delay, as determined by the Commission (or, in the case of a court-appointed trustee, by the court).
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Exxon Corporation's absolute and unconditional obligation to divest expeditiously at no minimum price. The divestiture shall be made in the manner, and to the acquirer or acquirers, as set out in Paragraph II.A.2. of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission approves more than one such acquiring entity, then the trustee shall divest to the acquiring entity or entities selected by Exxon Corporation from among those approved by the Commission.
 7. The trustee shall serve, without bond or other security, at the cost and expense of Exxon Corporation, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Exxon Corporation, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The 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 Exxon Corporation and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestiture required by this Order.
 8. Exxon Corporation shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the 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 resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, recklessness, willful or wanton acts, or bad faith by the trustee.
 9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III. 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 trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.
11. In the event that the trustee determines that he or she is unable to divest the Viscosity Index Improver Business in a manner consistent with the Commission's purpose as described in Paragraph II, the trustee may divest additional ancillary assets of Exxon Corporation and effect such arrangements as are necessary to satisfy the requirements of this Order.
12. The trustee shall have no obligation or authority to operate or maintain the Viscosity Index Improver Business.
13. The trustee shall report in writing to Exxon Corporation and the Commission every thirty (30) days concerning the trustee's efforts to accomplish the divestiture.

IV

IT IS FURTHER ORDERED that

A. Exxon Corporation shall not provide, disclose, or otherwise make available to The Shell Petroleum Company Limited, Shell Oil Company, or the Joint Venture, any Non-public Information.

B. Exxon Corporation shall use any Non-public Information only for the purpose of fulfilling its obligations to supply current and future OCP Polymer for Viscosity Index Improver Applications to the Viscosity Index Improver Business, to Chevron under the Chevron Agreement, or to a purchaser of the Viscosity Index Improver Business; provided that such information may be used internally by Exxon Corporation for analyzing the business performance of Vistalon.

C. The Shell Petroleum Company Limited and Shell Oil Company shall not seek, obtain, or use, directly or indirectly, through the Joint Venture or otherwise, any Non-public Information that originates with Vistalon, Chevron, or the acquirer of the Viscosity Index Improver Business.

Provided that nothing in this Order shall prohibit the Joint Venture, Chevron and its successors and assigns, or the acquirer of the Viscosity Index Improver Business and its successors and assigns, from selling Viscosity Index Improver to Respondents' finished oil manufacturing and marketing business units, or from exchanging information, as is necessary for such sales, with those business units regarding Respondents' use of such viscosity index improver products.

Provided further that nothing in this Order shall prohibit Exxon Corporation from selling OCP Polymer for Viscosity Index Improver Applications pursuant to Paragraph II.F.

V

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final, and every thirty (30) days thereafter until the divestiture has occurred, Respondents shall submit to the Commission verified written reports setting forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with their individual obligations, if any, under Paragraphs II., III., and IV. of this Order. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with their individual obligations, if any, under Paragraphs II. and III. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties that have contacted Respondents or that have been contacted by Respondents. Respondents shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

VI

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents, 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 Exxon Corporation that may affect compliance obligations arising out of the Order.

VII

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, Respondents shall permit any duly authorized representatives of the Commission:

- A. During office hours and in the presence of counsel, access 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 Respondents relating to any matters contained in this Order; and
- B. Upon five (5) days' notice to Respondents, and without restraint or interference, to interview officers, employees, or agents of Respondents.

VIII

IT IS FURTHER ORDERED that this Order shall terminate upon the earliest of:

- A. October 30, 2018;
- B. Thirty (30) days after Respondents (a) abandon the Consummation of the Joint Venture, (b) gives the Commission written notification that Respondents have abandoned the Consummation of the Joint Venture, and (c) withdraw their notification under 16 C.F.R. § 803.1 with respect to the Joint Venture; or
- C. At any time following ten (10) years after the date on which the Order becomes final if Chevron or the purchaser of the Viscosity Index Improver Business has ceased its purchases of OCP Polymer for Viscosity Index Improver from Exxon Corporation.

By the Commission.

SEAL

Donald S. Clark
Secretary

ISSUED: October 30, 1998

APPENDIX I

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

Exxon Corporation,
a corporation,

The Shell Petroleum Company Limited,
a corporation,

and

Shell Oil Company,
a corporation.

File No. 971-0007

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate (“Hold Separate Agreement”) is by and between Exxon Corporation (“Exxon”), a corporation organized, existing, and doing business under and by virtue of the laws of New Jersey, having its principal offices at 5959 Las Colinas Boulevard, Irving, Texas 75039, and the Federal Trade Commission (the “Commission”), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.* (collectively, the “Parties”).

PREMISES

WHEREAS, on July 10, 1996, Exxon Chemical Company, a division of Exxon Corporation, The Shell Petroleum Company Limited, and Shell Oil Company announced an intention to form a joint venture to own and operate the businesses of Exxon Chemical Company, The Shell Petroleum Company Limited, and Shell Oil Company engaged in the development, manufacture, and sale of additives used in the production of fuels and lubricants (the “Joint Venture”); and

WHEREAS, the Commission is now investigating the formation of the Joint Venture to determine whether it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the attached Agreement Containing Consent Order, which would require the divestiture of either the Assets Identified in the Chevron

Agreement to Chevron or the Viscosity Index Improver Business, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if Exxon Corporation does not sell the Assets Identified in the Chevron Agreement to Chevron, and that if an understanding is not reached, preserving the *status quo ante* of the Viscosity Index Improver Business as defined in Paragraph I. of the Consent Order during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 60-day public comment period), divestiture resulting from any proceeding challenging the legality of the Joint Venture might not be possible, or might be less than an effective remedy; and

WHEREAS, the Commission is concerned that if the Joint Venture is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Viscosity Index Improver Business, as described in Paragraph I. of the Consent Order, and the Commission's right to have the Viscosity Index Improver Business continue as a viable competitor independent of the Joint Venture; and

WHEREAS, if pending a divestiture acceptable to the Commission, it is necessary to hold separate the Viscosity Index Improver Business to protect interim competition pending divestiture or other relief; and

WHEREAS, the purpose of the Hold Separate Agreement and the Consent Order is to:

1. preserve, pending a divestiture acceptable to the Commission, the Viscosity Index Improver Business as an ongoing, viable, competitive, and independent entity engaged in the same business in which it is presently engaged;
2. prevent interim harm to competition pending divestiture and other relief; and
3. remedy any anticompetitive effects of the formation of the Joint Venture; and

WHEREAS, Exxon Corporation's entering into this Hold Separate Agreement shall in no way be construed as an admission by Exxon Corporation that the formation of the Joint Venture is illegal; and

WHEREAS, Exxon Corporation understands that no act or transaction contemplated by this Hold Separate Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Hold Separate Agreement.

NOW, THEREFORE, upon the understanding that the Commission has not yet determined whether the formation of the Joint Venture will be challenged, and in consideration of the Commission's agreement that at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, Exxon Corporation agrees as follows:

1. Exxon Corporation agrees to execute and be bound by the attached Consent Order.
2. Exxon Corporation agrees that from the date Exxon Corporation, The Shell Petroleum Company Limited and Shell Oil Company consummate the Joint Venture (“Acquisition Date”), Exxon Corporation and the Viscosity Index Improver Business each will comply with the provisions of this Agreement until the day after the divestiture required by the Consent Order has been completed.
3. Exxon Corporation agrees to execute and be bound by the attached Consent Order and to comply, from the date this Hold Separate Agreement is accepted by the Commission for public comment, with the provisions of the Consent Order as if it were final.
4. The terms capitalized herein shall have the same definitions as in the Consent Order.
5. To assure the complete independence and viability of the Viscosity Index Improver Business, and to assure that no Material Confidential Information ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.) is exchanged between the Viscosity Index Improver Business and Exxon Corporation, The Shell Petroleum Company Limited, Shell Oil Company, or the Joint Venture, Exxon Corporation shall hold the Viscosity Index Improver Business separate and apart on the following terms and conditions:
 - a. The Viscosity Index Improver Business shall be held separate and apart and shall be managed and operated independently of Exxon Corporation (meaning here and hereinafter, Exxon Corporation and the Joint Venture, excluding the Viscosity Index Improver Business), except to the extent that Exxon Corporation must exercise direction and control over such assets to assure compliance with this Hold Separate Agreement or the Consent Order, and except as otherwise provided in this Hold Separate Agreement.
 - b. Exxon Corporation will appoint, prior to the Consummation of the Joint Venture, an individual to manage and maintain the Viscosity Index Improver Business who will make no changes to the Viscosity Index Improver Business other than changes in the ordinary course of business. This individual (“Manager”) shall manage the

Viscosity Index Improver Business independently of the management of Exxon Corporation's other businesses. The Manager shall not be involved in any way in the operations or management of any other Exxon Corporation business.

- c. The Manager shall have exclusive control over the Viscosity Index Improver Business with responsibility for the management of the Viscosity Index Improver Business and for maintaining the independence of that business.
- d. Exxon Corporation shall not exercise direction or control over, or influence directly or indirectly the Manager relating to the operation of the Viscosity Index Improver Business; provided, however, that Exxon Corporation may exercise only such direction and control over the Manager and the Viscosity Index Improver Business as is necessary to assure compliance with this Hold Separate Agreement and with all applicable laws.
- e. Exxon Corporation shall maintain the marketability, viability, and competitiveness of the Viscosity Index Improver Business, and shall not sell, transfer, encumber it (other than in the normal course of business or to assure compliance with the Consent Agreement), or otherwise impair its marketability, viability or competitiveness.
- f. Exxon Corporation shall continue to provide the same support services to the Viscosity Index Improver Business as are being provided to such assets by Exxon Corporation as of the date this Hold Separate Agreement is signed by Exxon Corporation.
- g. Except for the Manager, employees of the Viscosity Index Improver Business, and support service employees involved in the Viscosity Index Improver Business, such as Human Resources, Legal, Tax, Accounting, Insurance, and Internal Audit employees, Exxon Corporation shall not permit any other Exxon Corporation employee, officer, or director to be involved in the management of the Viscosity Index Improver Business. Employees of the Viscosity Index Improver Business shall not be involved in any other Exxon Corporation business.
- h. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Joint Venture, defending investigations or litigation, or negotiating agreements to divest the Viscosity Index Improver Business, Exxon Corporation, other than employees of the Viscosity Index Improver Business, or support services employees involved in the Viscosity Index Improver Business, shall not receive or have access to, or the use of, Non-public Viscosity Index Improver Business information or any Material Confidential Information about the Viscosity Index Improver Business or the activities of the

Manager or support service employees involved in the Viscosity Index Improver Business, not in the public domain.

- i. Exxon Corporation shall circulate to all of its Vistalon and Paramins employees involved in the Viscosity Index Improver Business, and appropriately display, a copy of this Hold Separate Agreement and Consent Agreement.
 - j. If the Manager ceases to act or fails to act diligently and consistently with the purposes of this Hold Separate Agreement, Exxon Corporation shall appoint a substitute Manager.
 - k. Exxon Corporation shall require the Manager to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as the Manager to anyone other than the Commission or, as required in managing the Viscosity Index Improver Business, to the Viscosity Index Improver Business' employees, customers, or suppliers.
 - l. The Manager shall report in writing to the Commission every thirty (30) days concerning his or her efforts to accomplish the purposes of this Hold Separate Agreement.
6. Should the Commission seek in any proceeding to compel Exxon Corporation to divest any of the Viscosity Index Improver Business, as provided in the Consent Order, or seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Hold Separate Agreement, or in any way relating to the Joint Venture, as defined in the draft complaint, Exxon Corporation shall not raise any objection based upon the fact that the Commission has permitted the Consummation of the Joint Venture. Exxon Corporation also waives all rights to contest the validity of this Hold Separate Agreement.
 7. To the extent that this Hold Separate Agreement requires Exxon Corporation to take, or prohibits Exxon Corporation from taking, certain actions that otherwise may be required or prohibited by contract, Exxon Corporation shall abide by the terms of this Hold Separate Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil action brought by the Commission to enforce the terms of this Hold Separate Agreement or Consent Order.
 8. For the purposes of determining or securing compliance with this Hold Separate Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to Exxon Corporation made to its principal office, Exxon Corporation shall permit any duly authorized representatives of the Commission:

- a. During the office hours of Exxon Corporation, and in the presence of counsel, access 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 Exxon Corporation relating to compliance with this Agreement; and
 - b. Upon five (5) days' notice to Exxon Corporation and without restraint or interference from it, to interview officers or employees of Exxon Corporation, who may have counsel present, regarding any such matters.
9. This Hold Separate Agreement shall not be binding on the Commission until it is approved by the Commission.

Dated: July __, 1998

Exxon Corporation

By: _____

FEDERAL TRADE COMMISSION

By: _____
Debra A. Valentine
General Counsel