

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

)	
In the Matter of)	
)	
Thermo Electron Corporation,)	Docket No. C-4170
a corporation.)	
)	[Public Record Version]
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)	

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger of Respondent Thermo Electron Corporation (hereinafter “Thermo Electron”, “Respondent”, or “Respondent Thermo Electron”) and Fisher Scientific International Inc., and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, 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 Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said 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 has 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”):

1. Respondent Thermo Electron is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its offices and principal place of business located at 81 Wyman Street, Waltham, Massachusetts 02454.

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

ORDER

I.

IT IS ORDERED that, as used in the Order, the following definitions shall apply:

- A. "Thermo Electron" or "Respondent" means Thermo Electron Corporation,, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups and affiliates controlled by Thermo Electron Corporation, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Fisher Scientific” means, Fisher Scientific International Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at Liberty Lane, Hampton, New Hampshire 03842; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Fisher Scientific International Inc.
- C. “Genevac” means Genevac Limited, a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom, with its offices and principal place of business located at The Sovereign Center, Farthing Road, Ipswich IP1 5AP, United Kingdom; and Genevac Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 707 Executive Boulevard, Suite D, Valley Cottage, New York 10989, and their joint ventures, subsidiaries, divisions, groups, and affiliates controlled by either Genevac Limited or Genevac Inc.
- D. "Commission" means the Federal Trade Commission.
- E. “Acquirer” means any Person who receives the prior approval of the Commission to acquire the CVE Business pursuant to the Decision and Order.

- F. "Acquisition" means the proposed acquisition of Fisher Scientific by Thermo Electron pursuant to the Agreement and Plan of Merger, dated as of May 7, 2006, by and among Thermo Electron and Trumpet Merger Corporation, a wholly owned subsidiary of Thermo Electron, and Fisher Scientific.
- G. "Acquisition Date" means the date the Acquisition is consummated.
- H. "Confidential Business Information" means any information relating to the CVE Business before the Effective Date of Divestiture that is not in the public domain, including, but not limited to:
1. All contracts, agreements, bids, purchase orders, or other documents or information relating to any acquisition of goods or services related to the CVE Business;
 2. All marketing studies, marketing plans, data, or other documents or information relating to the CVE Business;
 3. All files and documents relating to Genevac's suppliers to the extent relating to Genevac;
 4. All customer files, customer payment records, price information, service records, and purchase history; and,
 5. All trade secrets, information about products or processes under development, and other intellectual property that is not in the public domain.
- I. "CVEs" means centrifugal vacuum evaporators, which use a combination of heat, vacuum, and centrifugal force to remove solvents from laboratory samples, evaporating off the solvents while preserving and drying the samples for storage, further analysis, characterization, or experimentation.
- J. "CVE Business" means all of Respondent's right, title, and interest in Genevac acquired in the Acquisition, including, but not limited to, all of Genevac's outstanding capital stock, tangible and intangible assets, properties, business and goodwill, *provided, however*, that cash, receivables or other non-unique assets may be excluded from the sale of the CVE Business at the request of the Acquirer and subject to the prior approval of the Commission.
- K. "Divestiture Agreement" means any agreement or contract that receives the prior approval of the Commission that is related to the divestiture required by

Paragraph II. or IV. of the Decision and Order.

- L. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of the Decision and Order.
- M. "Effective Date of Divestiture" means the date on which Respondent (or a Divestiture Trustee) divests to a Commission-approved Acquirer the CVE Business completely and as required by Paragraph II or IV of the Decision and Order.
- N. "Key Employees" means the persons listed in Confidential Appendix 1.
- O. "Knowledgeable Employees" means any person employed by or under contract to Genevac at any time between May 7, 2006, and the Effective Date of Divestiture, including but not limited to, Key Employees, *provided, however*, that such person is still employed by Fisher Scientific or Genevac at the time Respondent's obligations under Paragraph II.C. of the Decision and Order arise.
- P. "Retention Bonus" means the retention bonus and compensation described in Confidential Appendix 2.
- Q. "Governmental Entity" means any Federal, state, local or non-U.S. government or any court, legislature, governmental agency or governmental commission or any judicial or regulatory authority of any government.
- R. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- S. "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 terminate pursuant to Paragraph VII. hereof.
- T. "Hold Separate" means this Order to Hold Separate and Maintain Assets.
- U. "Hold Separate Trustee" means the person appointed as the Hold Separate Trustee pursuant to this Hold Separate.
- V. "CVE Business Manager" means an individual with experience in the management, sales, marketing, and financial operations of the CVE Business, who is appointed by the Respondent and approved by the Hold Separate Trustee to manage the CVE Business during the Hold Separate Period.

II.

IT IS FURTHER ORDERED that:

- A. During the Hold Separate Period, Respondent shall (i) hold the CVE 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 CVE Business to assure compliance with this Hold Separate, or with the Decision and Order contained in the Consent Agreement, and except as otherwise provided in this Hold Separate, and (ii) shall vest the CVE Business and Hold Separate Trustee 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 and marketability of the CVE 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 intellectual property, contracts, 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 CVE Business as a viable, competitive, and ongoing business, independent of Respondent, until the Effective Date of Divestiture of the CVE Business; (ii) assure that no Confidential Business Information is exchanged between Respondent and the CVE Business, except as otherwise provided in this Hold Separate; and (iii) prevent interim harm to competition pending divestiture of the CVE Business.
- D. Respondent shall comply with all terms of the Divestiture Agreement, Hold Separate Trustee Agreement, and Management Agreement, and any breach by Respondent of any term of the Divestiture Agreement, Hold Separate Trustee Agreement, or Management Agreement shall constitute a violation of this Order. If any term of the Divestiture Agreement, Hold Separate Trustee Agreement, or Management Agreement varies from the terms of this Order (“Order Term”), then to the 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 Agreement, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

III.

IT IS FURTHER ORDERED that:

- A. Harry Cole is hereby appointed to serve as the Hold Separate Trustee. The Hold Separate Trustee may be the same Person as the Divestiture Trustee.
- B. The 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 Hold Separate Trustee Agreement that, subject to the approval of the Commission, transfers to the Hold Separate Trustee all rights, powers and authorities contained in the Hold Separate and consistent with the Decision and Order or necessary to permit the 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 Hold Separate Trustee all rights, powers, and authorities necessary to permit the 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 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 CVE Business; for managing the CVE Business through the CVE Business Manager; for maintaining the independence of the CVE Business; and for assuring Respondent's compliance with its obligations pursuant to this Hold Separate and the Decision and Order.
 - 4. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the CVE Business, or to any other relevant information of the Respondent relating to the CVE Business, or (subject to any legally recognizable privilege of Respondent) to any other relevant information relating to Respondents' obligations under the Decision and Order and/or under this Hold Separate, as the Hold Separate Trustee may reasonably request. During the Hold Separate Period, Respondent shall develop such financial or other information relating to the CVE Business as the Hold Separate Trustee may reasonably

request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the 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 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 Hold Separate Trustee's duties and responsibilities. The Hold Separate Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
 6. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission, and Confidential Business Information received from Respondent, in connection with the performance of the Hold Separate Trustee's duties.
 7. The Respondent may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information relating to the CVE Business, to anyone other than the Commission. However, nothing herein shall be construed to inhibit the communication of any Confidential Business Information between and among the Hold Separate Trustee, the Commission, and the individuals contemplated for the employment relationships provided for in this Hold Separate.
 8. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Commission may appoint a substitute Hold Separate Trustee. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed 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 Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed Hold Separate Trustee.
- C. No later than ten (10) days after the execution of the Hold Separate Trustee Agreement, Respondent shall, subject to the approval of the Hold Separate Trustee, enter into a management agreement ("Management Agreement") with, and transfer to the CVE Business Manager all rights, powers, and authorities necessary to permit the CVE Business Manager to perform his or her duties and

responsibilities, pursuant to the Hold Separate and consistent with the purposes of the Decision and Order. The Management Agreement shall be effective on the Acquisition Date.

1. The CVE Business Manager, in his or her capacity as such, shall report directly and exclusively to the Hold Separate Trustee, and shall manage the CVE Business independently of the management of Respondent. The CVE Business Manager shall not be involved in any way in the operations of the Respondent's businesses (other than the CVE Business) during the Hold Separate Period.
2. The CVE Business Manager shall sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information relating to the CVE Business to anyone other than the Commission and to the Hold Separate Trustee; *provided, however*, as authorized by the Hold Separate Trustee and consistent with this Hold Separate and the Decision and Order, the CVE Business Manager may disclose Confidential Business Information pursuant to Paragraph III.D. of this Hold Separate directly to Respondent's employees and agents.
3. In the event the CVE Business Manager ceases to act in his or her capacity as such, then Respondent shall select a substitute CVE Business Manager, subject to the approval of the Hold Separate Trustee, and transfer to the substitute CVE Business Manager all rights, powers and authorities necessary to permit the substitute CVE Business 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 CVE Business except that the CVE Business Manager shall be permitted to remove management employees for cause subject to approval of the Hold Separate Trustee. The Hold Separate Trustee shall have the power to remove the CVE Business Manager for cause. Within fifteen (15) days after such removal, Respondent shall appoint a replacement for the CVE Business Manager, subject to the approval of the Hold Separate Trustee in the same manner as provided in Paragraph III. of this Hold Separate.
5. The CVE Business Manager shall have no financial interests affected by Respondent's revenues, profits or profit margins, except that the CVE Business Manager's compensation for managing the CVE Business may include economic incentives dependent on the financial performance of the CVE Business if there are also sufficient incentives for the CVE Business Manager to operate the CVE 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 CVE Business Manager.

6. The CVE Business Manager shall make no material changes in the present operation of the CVE Business except with the approval of or at the instruction of the Hold Separate Trustee.
7. The CVE Business Manager shall employ such employees as are reasonably necessary to assist the CVE Business Manager in managing the CVE Business.

D. Respondent's employees (excluding support services employees involved in providing support to the CVE Business pursuant to this Hold Separate) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the CVE Business not in the public domain except:

1. as required by law;
2. to the extent that necessary information is exchanged in the course of consummating the Acquisition;
3. in negotiating agreements to divest the CVE Business pursuant to the Consent Agreement and engaging in related due diligence;
4. in complying with this Hold Separate or the Consent Agreement;
5. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the CVE Business and the integrity of the CVE Business's financial controls;
6. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the CVE Business; or
7. in obtaining legal advice.

Nor shall the CVE Business Manager or employees of the CVE Business receive or have access to, or use or continue to use, any Confidential Business 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 CVE Business. Respondent may receive aggregate financial and operational information relating to the CVE Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United

States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

- E. Respondent shall assure that the CVE Business is staffed with employees sufficient to maintain the marketability, viability, and competitiveness of the CVE Business. During the Hold Separate Period, the CVE Business Manager, with the approval of the Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the CVE Business since May 7, 2006. To the extent that Knowledgeable Employees or Key Employees leave the CVE Business during the Hold Separate Period, the CVE Business Manager, with the approval of the Hold Separate Trustee, shall use reasonable efforts to replace the departing employees with persons who have similar experience and expertise.
1. No later than five (5) days after the Acquisition Date, Respondent shall cause the CVE Business Manager and each Knowledgeable Employee and Key Employee with managerial responsibilities having access to Confidential Business Information relating to the CVE 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 Confidential Business Information relating to the CVE 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 CVE 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 CVE Business. This agreement shall provide that it may be enforced by the Acquirer.
 2. No later than ten (10) days after the execution of the Hold Separate Trustee Agreement, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the CVE Business consistent with the provisions of this Hold Separate. These procedures shall be effective on the Acquisition Date.
 3. No later than five (5) days after the Acquisition Date, Respondent shall circulate to the Knowledgeable Employees and Key Employees and to Respondent's employees who are responsible for the operation of the CVE Business, or the research, development, manufacture, distribution,

marketing or sale of Respondent's CVEs, a notice of this Hold Separate and Consent Agreement, in the form attached as Attachment A.

- F. The Hold Separate Trustee and the CVE Business 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.
- G. Respondent shall indemnify the Hold Separate Trustee and the CVE Business Manager, and hold the Hold Separate Trustee and the CVE Business Manager harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the CVE Business Manager's duties under this Hold Separate, the Hold Separate Trustee Agreement, and the Management Agreement, including all reasonable fees of counsel and other expenses reasonably 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 Hold Separate Trustee or the CVE Business Manager.
- H. During the Hold Separate Period, Respondent shall provide the CVE Business with sufficient financial resources:
 - 1. as are appropriate in the judgment of the Hold Separate Trustee to operate the CVE Business, and at no less than current rates of operation (including, but not limited to, current rates of the CVE Business production and sales) and at no less than the rates of operation projected in the business plans and annual operating budget of the CVE Business as of May 7, 2006, (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 Genevac's business plans and annual operating budget shall not, by itself, be deemed to be a violation of this Hold Separate;
 - 2. to continue, at least at their scheduled pace, any additional expenditures for the CVE Business authorized prior to the date the Consent Agreement is executed;
 - 3. to perform all ordinary and necessary maintenance to, and replacements of, assets of the CVE Business;
 - 4. to maintain the viability, competitiveness, and marketability of the CVE Business until the Effective Date of Divestiture, provided the CVE

Business may not assume any new long-term debt, except as necessary to meet a competitive threat and as approved by the Hold Separate Trustee; and,

5. such financial resources to be provided to the CVE 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 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.
- I. During the Hold Separate Period, Respondent shall, at the option of the CVE Business Manager, and with the approval of the Hold Separate Trustee, continue to provide the same support services to the CVE Business as are being provided to such assets and business as of the date Respondent executes the Consent Agreement; provided:
1. Respondent may charge the CVE Business the same fees, if any, charged by Fisher Scientific 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 Confidential Business Information relating to the CVE 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 CVE Business). Such personnel shall also be required to execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information relating to the CVE Business.
 3. Respondent shall not exercise direction or control over, or influence directly or indirectly, the CVE Business, the Hold Separate Trustee, the CVE Business Manager, or any of its operations; provided, however, that Respondent may exercise only such direction and control over the CVE 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 Hold Separate Trustee, continued oversight of the CVE 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 CVE Business.

4. Except for the CVE Business Manager, the 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 CVE Business to be involved in the operations of the CVE Business.

J. During the Hold Separate Period:

1. Respondent shall not employ or make offers of employment to any Knowledgeable Employee or Key Employee; and,
2. Respondent shall: (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Knowledgeable Employees, directly or indirectly attempt to persuade any one or more of the Knowledgeable Employees to decline any offer of employment from the Acquirer, or offer any incentive to any Knowledgeable Employee to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any Knowledgeable Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondent that directly or indirectly relate to CVEs or Genevac; and, (iii) continue to extend to any Knowledgeable Employees, during their employment by Genevac prior to the Effective Date of Divestiture, all employee benefits offered by Respondent, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits.

K. Respondent shall not solicit, negotiate, hire or enter into any arrangement for the services of all or any of the Key Employees for two (2) years from Effective Date of Divestiture.

L. Respondent shall pay a Retention Bonus to any and all Key Employees.

M. For a period of one year from the Effective Date of Divestiture, Respondent shall not, directly or indirectly, solicit, negotiate, hire or enter into any arrangement for the services of all or any of the Knowledgeable Employees employed by the Acquirer, unless such employee's employment has been terminated by the Acquirer.

IV.

IT IS FURTHER ORDERED that:

- A. Respondent shall maintain the viability, marketability, and competitiveness of the CVE Business, and shall not cause the wasting or deterioration of the CVE Business, nor shall they cause the CVE 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 CVE Business. Respondent shall comply with the terms of this subparagraph IV.A. until such time as Respondent or the Divestiture Trustee has divested the CVE Business pursuant to the terms of the Decision and Order. Respondent shall conduct the business of the CVE 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 CVE 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 CVE Business intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the CVE Business.
- B. During the Hold Separate Period, Respondent shall ensure that the Knowledgeable Employees and the Key Employees continue to be paid their salaries, all current and accrued bonuses, pensions and other 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, or as permitted by Paragraph III.B. of the Decision and Order, Respondent shall not receive or have access to, or use or continue to use, any Confidential Business Information. Respondent may receive, on a regular basis, aggregate financial and operating information relating to the CVE Business necessary to allow Respondents to prepare 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 and Paragraph III.B. of the Decision and Order.

- D. Within thirty (30) days after commencement of the Hold Separate Period and every sixty (60) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the CVE 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 purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and 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 compliance with 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, who may have counsel present, regarding such matters.

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 CVE Business, as required by the Decision and Order contained in the Consent Agreement.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 17, 2006

Attachment A

NOTICE OF DIVESTITURE and REQUIREMENT FOR CONFIDENTIALITY

Thermo Electron Corporation (hereinafter, “Thermo Electron”) has entered into an Agreement Containing Consent Order (hereinafter, “Consent Agreement”) with the Federal Trade Commission relating to the divestiture of Genevac Limited (“Genevac”). Additional information about the Consent Agreement, as well as a copy of the Consent Agreement and a proposed Decision and Order that requires the divestiture, can be found on the web site of the Federal Trade Commission at www.ftc.gov.

Under the terms of the Consent Agreement, Thermo Electron must divest Genevac within one hundred and fifty (150) days after Thermo Electron closes the acquisition of Fisher Scientific International, Inc. Thermo Electron may only divest Genevac to an acquirer, approved by the Federal Trade Commission, who is financially sound and who will maintain Genevac as a viable competitor in the centrifugal vacuum evaporator market.

Until Thermo Electron divests Genevac, Thermo Electron must manage and maintain Genevac as a separate, ongoing business, independent of all of Thermo Electron’s other businesses. Harry Cole has been appointed by the Federal Trade Commission to supervise the operation of Genevac until it is divested. All confidential competitive information about Genevac must be retained and maintained by the people operating Genevac on a confidential basis. The people operating Genevac are prohibited from discussing, exchanging, circulating, or providing any confidential competitive information about Genevac with anyone, other than Mr. Cole, outside of Genevac. Similarly, people working for Thermo Electron with duties relating to centrifugal vacuum evaporators are prohibited from discussing, exchanging, circulating, or providing any confidential competitive information about Thermo Electron’s products with anyone at Genevac.

We invite you to ask any questions about the divestiture of Genevac and the prohibition against discussing or disclosing confidential competitive information. Employees of Genevac should contact either James Roche at jim.roche@genevac.co.uk or +44 (0) 1473 243011, or Caron McLure at caron.mclure@genevac.co.uk or +44 (0) 1473 243015. All other employees should contact Jonathan Wilk at jonathan.wilk@thermo.com or 781-622-1281.

Confidential Appendix 1 and Confidential Appendix 2

[Redacted From Public Record Version But Incorporated By Reference]