

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

Commissioners: **Robert Pitofsky, Chairman**
 Sheila F. Anthony
 Mozelle W. Thompson
 Orson Swindle
 Thomas B. Leary

In the matter of

**RHI AG,
a corporation.**

Docket No. C-4005

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by RHI AG of 100 percent of the voting securities of Global Industrial Technologies, Inc., and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition presented 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, 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 Agreement Containing Consent Order 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 the Respondent has violated the said Acts and that a Complaint should issue stating its charges in that respect, and having accepted the executed Agreement Containing Consent Order and placed such Agreement Containing Consent 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, and makes the following jurisdictional findings and issues the following Order:

1. Respondent RHI AG is a corporation organized, existing and doing business under and by virtue of the laws of Austria, with its office and principal place of business at Mommsengasse 35, A-1040 Vienna, Austria.

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.

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

- A. “RHI” means RHI AG, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by RHI (including, but not limited to, North American Refractories Company), and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.
- B. “Global” means Global Industrial Technologies, Inc., a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business at 2121 San Jacinto Street, Suite 2500, Dallas, Texas 75201.
- C. “Respondent” means RHI.
- D. "Commission" means the Federal Trade Commission.
- E. “Acquisition” means the acquisition by RHI, described in the Agreement and Plan of Merger Among RHI AG, Heat Acquisition Corporation, and Global Industrial Technologies, Inc., dated July 12, 1999, pursuant to which Respondent agreed to acquire one hundred (100) percent of the shares of common stock of Global.
- F. “Basic Refractory Bricks For Steel Production” means magnesia-carbon bricks for basic oxygen furnaces, magnesia-carbon bricks for electric arc furnaces, magnesia-carbon bricks for steel ladles, and magnesia-chrome bricks for steel degassers, and includes, but is not limited to:
 - 1. Those products listed on pages one through four of a document entitled, “UNBURNED BASIC (Hammond),” attached as part of Schedule 1.2(a)(vii) of the Divestiture Agreement; and,
 - 2. Those products listed on pages one through three of a document entitled, “BURNED BASIC (MgO) & MagChrome (Marelan),” attached as part of Schedule 1.2(a)(vii) of the Divestiture Agreement.
- G. “High Alumina Refractory Bricks For Steel Production” means high alumina bricks for steel ladles and high alumina bricks for torpedo cars, and includes, but is not

limited to, those products listed on page 1 of a document entitled, “BURNED BAUXITE (Farber)” attached as part of Schedule 1.2(a)(vii) of the Divestiture Agreement.

- H. “Divested Products” means Basic Refractory Bricks For Steel Production and High Alumina Refractory Bricks For Steel Production.
- I. “Divested Assets” means:
 - 1. all of Respondent’s rights, title, and interest acquired from Global pursuant to the Acquisition, in all assets and businesses relating to the research, development, manufacture, sale, and distribution of Basic Refractory Bricks For Steel Production in North America, including, without limitation, the following:
 - a. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property located at or relating to a facility owned and operated by Global at 5501 Kennedy Avenue, Hammond, IN 46323-1168;
 - b. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property located at or relating to a facility owned and operated by Global at 78, route 148, Grenville, Quebec JOV1JO, Canada;
 - c. 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, wherever located;
 - d. all United States and Canadian intellectual property rights, including but not limited to patents, patent rights, patent applications, formulas, mixes, molds, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;
 - e. raw material and finished product inventories and goods in process, wherever located;
 - f. all right, title and interest in and to owned or leased real property, together with appurtenances, licenses, and permits, wherever located;
 - g. all right, title, interest, and contractual rights in and to sources of raw material for Basic Refractory Bricks For Steel Production, wherever located;
 - h. all right, title, and interest in and to the contracts (together with associated bids) entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents,

- personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, wherever located;
 - i. all rights under warranties and guarantees, express or implied, wherever located;
 - j. all separately maintained, as well as relevant portions of not separately maintained, books, records and files, wherever located;
 - k. all federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located; and
 - l. all items of prepaid expense; and,
- 2. all of Respondent's rights, title, and interest in all assets and businesses related to the research, development, manufacture, distribution, and sale of High Alumina Refractory Bricks For Steel Production in North America, including, without limitation, the following:
 - a. all plant facilities, machinery, fixtures, equipment, vehicles, transportation and storage facilities, furniture, tools, supplies, stores, spare parts, and other tangible personal property located at or relating to a facility owned and operated by Respondent at 300 Locust St., Farber, Missouri 63345;
 - b. 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, wherever located;
 - c. all United States and Canadian intellectual property rights, including but not limited to patents, patent rights, patent applications, formulas, mixes, molds, inventions, copyrights, trade secrets, know-how, trademarks, and trade names;
 - d. raw material and finished product inventories and goods in process, wherever located;
 - e. all right, title and interest in and to owned or leased real property, together with appurtenances, licenses, and permits, wherever located;
 - f. all right, title, interest, and contractual rights in and to sources of raw material for High Alumina Refractory Bricks For Steel Production, wherever located;
 - g. all right, title, and interest in and to the contracts (together with associated bids) entered into in the ordinary course of business with customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, wherever located;
 - h. all rights under warranties and guarantees, express or implied, wherever located;

- i. all separately maintained, as well as relevant portions of not separately maintained, books, records and files, wherever located;
- j. all federal, state, and local regulatory agency registrations, permits, and applications, and all documents related thereto, wherever located; and
- k. all items of prepaid expense, wherever located.

Provided, however, that if Respondent divests to Resco pursuant to Paragraph II.A. of this Order, Divested Assets are limited to the assets conveyed by the Divestiture Agreement, and Divested Assets do not include the following assets:

- (1) the fixtures, structures, and real property owned and operated by Respondent in Farber, Missouri (“RHI Farber Plant”);
- (2) the assets and contracts listed on Schedules 1.2(b)(ix) and 1.3(b)(iv) to the Asset Purchase Agreement (dated November 11, 1999) among North American Refractories Company and Resco Products, Inc.;
- (3) any trademark rights for any brand to the left of which the word “no” has been typed in the column bearing the heading, “TM Rights*,” for:
 - (i) those brands listed on pages one through four of a document entitled, “UNBURNED BASIC (Hammond),” attached as part of Schedule 1.2(a)(vii) of the Divestiture Agreement; and,
 - (ii) those brands listed on pages one through three of a document entitled, “BURNED BASIC (MgO) & MagChrome (Marelan),” attached as part of Schedule 1.2(a)(vii) of the Divestiture Agreement;
- (4) any trademark rights for any brand to the left of which the word “no” has been typed in the column bearing the heading, “TM Rights*,” for those products listed on page 1 of a document entitled, “BURNED BAUXITE (Farber)” in Schedule 1.2(a)(vii) of the Divestiture Agreement;
- (5) the assets not transferred to Resco pursuant to Section 1.2(b) of the Divestiture Agreement, as and to the extent modified or amended by the Settlement Agreement;
- (6) the licenses described in Confidential Attachment A to this Consent Order;
- (7) fixtures, equipment, and raw materials used for the tar impregnation of Basic Refractory Brick For Steel Production;
- (8) any real property, buildings, fixtures, equipment, inventory, documents, or other tangible assets located outside of the United States and Canada in which any of the following RHI direct or indirect subsidiaries (the “Mexican Subsidiaries”) has a legal or equitable interest: Refmex, S. de R.L. de C.V. Refractorios Green, S. de R.L. de C.V. Indresco de Mexico, S.A. de C.V. Harbison-Walker Refractories, S.A. de C.V. Intool de Mexico, S.A. de C.V. Corrosion Technologies de Mexico, S.A. de C.V. A. P. Green de Mexico, S.A. de C.V. Veitsch-Radex-Didier Mexico S.A. de C.V. ;
- (9) all patents, trade secrets, and other intellectual property in which any of the Mexican Subsidiaries has a legal or equitable interest, except for

patents, trade secrets, and other intellectual property that such Mexican Subsidiaries acquired from Global that is used solely for the research, development, manufacture or sale of Basic Refractory Bricks For Steel Production; and,

(10) documents and records not required to be transferred to Resco pursuant to the terms of Paragraph 8 of the Settlement Agreement.

- J. “Resco” means Resco Products, Inc., a corporation organized, existing and doing business under and by virtue of the laws of the State of Pennsylvania with its office and principal place of business at Conshohocken Road, PO Box 108, Norristown, Pennsylvania 19404.
- K. “Acquirer” means either Resco, if Respondent divests pursuant to Paragraph II.A. of this Order, or such other entity to whom Respondent divests the Divested Assets pursuant to any other provision of this Order.
- L. “Divestiture Agreement” means each and all of the following:
1. Asset Purchase Agreement (dated November 11, 1999) among North American Refractories Company and Resco Products, Inc., as amended by Amendment No. 1 to Asset Purchase Agreement (November 19, 1999), Amendment No. 2 to Asset Purchase Agreement (November 30, 1999), Amendment No. 3 to Asset Purchase Agreement (December 3, 1999), Amendment No. 4 to Asset Purchase Agreement (December 10, 1999), Amendment No. 5 to Asset Purchase Agreement (December 10, 1999), and Amendment No. 6 to Asset Purchase Agreement (December 15, 1999);
 2. Transition Services Agreement between North American Refractories Company and Resco Products, Inc. (March 3, 2000);
 3. Magnesite Supply Agreement among North American Refractories Company and Resco Products, Inc., ((March 3, 2000); and,
 4. Settlement Agreement, including, but not limited to, the provisions of the Settlement Agreement that modify the Divestiture Agreement.
- M. “Settlement Agreement” means the Settlement Agreement between North American Refractories Company and Resco Products, Inc. (October 27, 2000).
- N. “New Divestiture Agreement” means all agreements for the sale of the Divested Assets other than the Divestiture Agreement, and includes any divestiture agreement entered into by a trustee pursuant to Paragraph III of this Order.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall divest to Resco, absolutely and in good faith, at no minimum price, the Divested Assets pursuant to the Divestiture Agreement on or before March 3, 2000.
- B. *Provided, however,* that if the Commission determines to make the Order final, but notifies the Respondent either that Resco is not an acceptable acquirer, or that the Divestiture Agreement is not an acceptable manner of divestiture, then Respondent shall rescind the Divestiture Agreement and rescind any divestiture to Resco, and Respondent shall divest the Divested Assets, absolutely and in good faith, and at no minimum price, pursuant to a New Divestiture Agreement within ninety (90) days of the date the Order becomes final to an Acquirer or Acquirers that receive the prior approval of the Commission and in a manner that receives the prior approval of the Commission.
- C. Any New Divestiture Agreement shall require Respondent to:
 - 1. Indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses arising from the performance of any service or the manufacture or sale of any raw material or product supplied to the Acquirer by Respondent pursuant to the New Divestiture Agreement; *provided, however,* that the obligations of this Paragraph II.C.1. may be contingent upon the Acquirer's giving Respondent prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Respondent to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel; *and provided further* that the obligations of this Paragraph II.C.1. need not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer;
 - 2. Make available to the Acquirer, upon reasonable notice and request by the Acquirer, for a period not to exceed eighteen (18) months from the date Respondent first provides assistance, personnel, or training to the Acquirer pursuant to the New Divestiture Agreement, all records kept in the normal course of business that relate to the Cost of providing such assistance, personnel, or training to the Acquirer.
- D. If Respondent or a trustee divests pursuant to Paragraph II.B. or Paragraph IV. of this Order, Respondent shall, at the option of the Acquirer, enter into a contract:

1. To supply and deliver to the Acquirer in a timely manner and under reasonable terms and conditions, any raw materials reasonably necessary for the Acquirer to use the Divested Assets in the same businesses in which the Divested Assets are engaged at the time of the Acquisition;
2. To assign or otherwise convey to the Acquirer all of Respondent's right, title, and interest in any contract with any person relating to research, development, manufacture, marketing, sale, brokerage, or distribution of the Divested Products; *provided that* if such assignment or conveyance may not be made or be made effective without the consent of any person, Respondent shall use its best efforts to obtain all necessary consents from such person and, failing such consent, shall enter into an agreement with the Acquirer to provide to the Acquirer all the benefits flowing to Respondent pursuant to such contract; and,
3. To provide to the Acquirer, at cost, for a period not to exceed six (6) months from the date of consummation of the New Divestiture Agreement, such assistance, personnel and training as requested by the Acquirer (including its agents and contractors) relating to:
 - a. the research, development, manufacture, sale, and distribution of the Divested Products; and,
 - b. any Environmental Protection Agency applications, registrations, procedures, proceedings, or approvals related to the research, manufacture, sale and distribution of Divested Products;

Provided, however, that with respect to the assets that are to be divested and the contracts that are to be entered into pursuant to this Paragraph II.D. at the option of the Acquirer or Acquirers, Respondent need not divest such assets or enter into such contracts only if the Acquirer or Acquirers choose not to acquire such assets or enter such contracts and the Commission approves the divestiture without such assets or contracts.

- E. Respondent shall not use any patents, trade secrets, or other intellectual property licensed from Resco pursuant to the Settlement Agreement (including but not limited to the patent license agreement attached as Exhibit C to the Settlement Agreement) for the research, development, manufacture, distribution, or sale of Divested Products in North America.
- F. Respondent shall comply with the terms of the Divestiture Agreement (if Respondent divests pursuant to Paragraph II.A. of this Order) or the New Divestiture Agreement (if Respondent, or a trustee, divests pursuant to Paragraph II.B. or Paragraph III. of this Order), which terms are incorporated by reference into this Order, and made a part hereof. Any failure by Respondent to comply with the Divestiture Agreement or the New Divestiture Agreement shall constitute a failure to comply with this Order. Notwithstanding any paragraph, section, or

other provision of the Divestiture Agreement (if Respondent divests pursuant to Paragraph II.A. of the Order) or the New Divestiture Agreement (if Respondent, or a trustee, divests pursuant to Paragraph II.B. or Paragraph III. of this Order), any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreement (if Respondent divests pursuant to Paragraph II.A. of the Order) or the New Divestiture Agreement (if Respondent, or a trustee, divests pursuant to Paragraph II.B. or Paragraph III. of this Order), without the prior approval of the Commission, shall constitute a failure to comply with this Order.

- G. Notwithstanding any provision of the Divestiture Agreement or this Order, Respondent's failure to act or to perform an obligation required by the Divestiture Agreement or this Order ("Required Act") by the date specified in the Divestiture Agreement or this Order ("Performance Date") shall not constitute a failure to comply with this Order if the Performance Date was on or before the date this Order becomes final, so long as Respondent performs such Required Act by the later of: (i) five (5) business days after the date this Order becomes final; and, (ii) the Performance Date, except that for any Performance Date created by paragraphs 4-9, 11-20, and 22-33 of the Settlement Agreement, and occurring after the date this Order becomes final, Respondent shall perform such Required Act within twenty (20) business days after the Performance Date.

- H. The purpose of the divestiture of the Divested Assets is to ensure the continued use of the Divested Assets in the same businesses in which the Divested Assets are engaged at the time of the Acquisition, and to remedy any lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

- I. Pending divestiture of the Divested Assets, Respondent shall take such actions as are necessary to maintain the viability, marketability and competitiveness of the Divested Assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divested Assets.

III.

IT IS FURTHER ORDERED that at any time after Respondent signs the Agreement Containing Consent Order in this matter, the Commission may appoint an Interim Trustee to ensure that Respondent fully performs its responsibilities in a timely manner as required by this Order and the Divestiture Agreement approved by the Commission. Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Trustee appointed pursuant to this Paragraph III:

- A. The Commission shall select the Interim Trustee, subject to the consent of Respondents, which consent 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) days after notice by 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.
- B. The Interim Trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and with the terms of the Divestiture Agreement.
- C. Within ten (10) days after appointment of the Interim Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the Interim Trustee all the rights and powers necessary to permit the Interim Trustee to monitor Respondent's compliance with the terms of this Order and with the Divestiture Agreement. The Interim Trustee shall 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 Interim Trustee.
- D. The Interim Trustee shall serve until the expiration of the terms of all of the contracts that comprise the Divestiture Agreement, or in the event that there is a New Acquirer pursuant to the provisions of Paragraph II.B. of this Order, the Interim Trustee shall serve until the expiration of the terms of all of the contracts that comprise the New Divestiture Agreement.
- E. The Interim Trustee shall have full and complete access to Respondent's personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, sale, and distribution of the Divested Products, or to any other relevant information, as the Interim Trustee may reasonably request. Respondent shall cooperate with any reasonable request of the Interim Trustee. Respondent shall take no action to interfere with or impede the Interim Trustee's ability to monitor Respondent's compliance with this Order and with the Divestiture Agreement or New Divestiture Agreement.
- F. The Interim 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 Interim 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 Interim Trustee's duties and responsibilities. The Interim Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

- G. Respondent shall indemnify the Interim Trustee and hold the Interim Trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the Interim Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations 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, willful or wanton acts, or bad faith by the Interim Trustee.
- H. If the Commission determines that the Interim Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in Paragraph III.A. of this Order.
- I. The Commission may on its own initiative or at the request of the Interim Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and with the Divestiture Agreement.
- J. The Interim Trustee shall report to the Commission in writing concerning compliance by Respondent with the provisions of Paragraphs II. and III. of this Order at least once every ninety (90) days. Such reports shall include at least the following:
 - 1. whether Respondent has supplied any magnesite or other raw materials to the Acquirer in conformity with the requirements of this Order and the Divestiture Agreement or New Divestiture Agreement;
 - 2. whether Respondent has provided any technical assistance, services, or refractory products to the Acquirer in conformity with the requirements of this Order and the Divestiture Agreement or New Divestiture Agreement;
 - 3. whether Respondent has paid the Acquirer for any products or services sold or otherwise provided to Respondent by the Acquirer in conformity with the requirements of this Order and the Divestiture Agreement or New Divestiture Agreement;
 - 4. whether Respondent has given the Interim Trustee access to records in conformity with this Order; and,

5. whether Respondents have maintained the Divested Assets as required in this Order.

IV.

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 Divested Assets to an Acquirer and to execute a New Divestiture Agreement that satisfies the requirements of Paragraph II of this Order. The Divestiture Trustee may be the same person as the Interim Trustee and will have the authority and responsibility to divest the Divested Assets absolutely and in good faith, and with the Commission's prior approval. 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 IV.A. 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(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- B. If a Divestiture Trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. of this Order to divest the Divested Assets to an Acquirer, 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 Trustee within ten (10) days after notice by 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 Divested Assets to an Acquirer pursuant to the terms of this Order and to enter into a Divestiture Agreement with the Acquirer pursuant to the terms of this Order, which Divestiture Agreement 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 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 Divested Assets to an Acquirer and to enter into a Divestiture Agreement with the Acquirer.

4. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.B.3. of this Order to divest the Divested Assets and to enter into a Divestiture Agreement with an Acquirer that satisfies 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 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 the Divested Assets, or 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 a Divestiture Agreement that complies with the provisions of Paragraph II. of this Order; to assure that Respondent complies with the remaining provisions of Paragraphs II, III and IV. of this Order; and to assure that the Acquirer obtains the assets required to research, develop, manufacture, sell and distribute the Divested Products. The divestiture shall be made to, and the Divestiture Agreement executed with, an Acquirer in the manner set forth in Paragraph II.B. of this Order; *provided, however*, if 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 a New 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 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 Paragraph IV. 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 Divested Assets and Respondent's compliance with the terms of this Order.

V.

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

VI.

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.

By the Commission.

Donald S. Clark
Secretary

SEAL:

ISSUED: March 21, 2001