



**SOLVAY**  
SERVICE JURIDIQUE



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

In the Matter of  
  
Solvay S.A.,  
a foreign corporation

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Docket No. C-4046

**PETITION OF SOLVAY S.A. TO  
REOPEN AND MODIFY HOLD SEPARATE ORDER**

Pursuant to §2.51(b) of the Rules of Practice and Procedure of the Federal Trade Commission (the "*Commission*"), 16 C.F.R. et seq. (2002) (the "*Commission's Rules*"), Solvay S.A., a company organized under the laws of Belgium ("*Solvay*"), hereby petitions the Commission to approve its request to reopen and modify the Hold Separate Order in the above-captioned matter (the "*Hold Separate*") to the extent and for the purpose specified in this petition. Paragraph III.C.1 of the Hold Separate provides for the appointment of a Solvay Fluoropolymers Manager (as such term is defined in the Hold Separate) to assist the Hold Separate Trustee (as such term is defined in the Hold Separate) in managing the businesses held separate pending divestiture. The Commission appointed Gary Mularski, an employee of Solvay Fluoropolymers, Inc., a Delaware corporation ("*SFT*"), as the Solvay Fluoropolymers Manager. Paragraph III.C.5 of the Hold Separate prohibits Solvay from retaining the services of the Solvay Fluoropolymers Manager for two years after the termination of the Hold Separate (the "*Closing*"). The Hold Separate terminated on January 21, 2003, when Solvay divested the required assets

to Dyneon LLC, a Delaware limited liability company ("*Dyneon*"). After February 28, 2003, Mr. Mularski's employment will not continue in the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business. Solvay proposes to hire Mr. Mularski to work at a business unit that is not related to either of the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business, and Dyneon does not object to the hiring of Mr. Mularski by Solvay to work at such a business unit. Accordingly, Solvay petitions the Commission to reopen and modify the Hold Separate to permit Solvay to hire Mr. Mularski promptly following the termination of Mr. Mularski's employment with SFI .

**I. Facts**

Dyneon acquired SFI pursuant to approval by the Commission on January 17, 2003 of Solvay's proposed divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business (as such terms are defined in the Hold Separate). Pursuant to paragraph I.KK of the Hold Separate, Mr. Mularski was appointed as the Solvay Fluoropolymers Manager during the period prior to the Closing. Solvay desires to employ Mr. Mularski, after the termination of his employment with SFI, as the Southern Key Accounts Manager for Solvay Minerals, Inc., an affiliate of Solvay ("*Solvay Minerals*"). Solvay Minerals is engaged in the business of producing and selling soda ash; it is not engaged in the research, development, manufacture, marketing, sale or distribution of polyvinylidene fluoride ("*PVDF*") or vinylidene fluoride ("*VF<sub>2</sub>*") and does not compete with SFI or Alventia LLC. Mr. Mularski's responsibilities as the Southern Key Accounts Manager for Solvay Minerals shall be primarily related to the production

and sale of soda ash, and will not relate, directly or indirectly, to the research, development, manufacture, marketing, sale or distribution of PVDF or VF<sub>2</sub>. Mr. Mularski's proposed employment with Solvay Minerals will be consistent with any continuing confidentiality, non-competition, or fiduciary obligations that Mr. Mularski may owe SFI or Dyneon.

**II. Applicable Provisions of Hold Separate**

Paragraph III.C.5 of the Hold Separate provides that Solvay shall not retain the services of Mr. Mularski for a period of two years following the Closing as follows:

For a period of two (2) years beginning after the termination of this Hold Separate, Respondent shall not retain the services of the Solvay Fluoropolymers Manager.

Likewise, paragraph II.H of the Commission's Decision and Order states:

Respondent shall comply fully with all terms and provisions of the Hold Separate, including, but not limited to, provisions restricting Respondent's employment of persons participating in the management of assets held separate.

**III. Proposed Modification of Hold Separate**

Solvay requests that the Commission reopen the Hold Separate and approve a modification of paragraph III.C.5 of the Hold Separate to permit Solvay to employ Mr. Mularski, following the termination of his employment with SFI, in the position of Southern Key Accounts Manager for Solvay Minerals. In particular, Solvay requests that the last sentence of paragraph III.C.5 of the Hold Separate be amended and restated in its entirety as follows:

For a period of two (2) years beginning after the termination of this Hold Separate, Respondent shall not retain the services of the Solvay Fluoropolymers Manager; *provided, however*, Respondent (or an affiliate) may retain the Solvay Fluoropolymers Manager and his services for positions and to perform services that do not relate, directly or indirectly, to the research, development, manufacture, marketing, sale or distribution of PVDF or VF<sub>2</sub>, but only if the Acquirer terminates the services of the Solvay Fluoropolymers Manager and does not object to Solvay's employment of the Hold Separate Manager in such positions.

The above proposed modification of paragraph III.C.5 of the Hold Separate will be consistent with paragraphs III.H.3 of the Hold Separate and II.F.1 of the Order, which permit Solvay to offer employment to any employee of SFI in the event that such employee is terminated by Dyneon, and with paragraph III.D.1 of the Hold Separate with respect to continuing confidentiality, non-competition and fiduciary obligations owed to SFI and Dyneon by those employees of SFI with managerial responsibilities.

**IV. Modification of the Hold Separate is in the Public Interest.**

Solvay respectfully submits that the purpose of the restriction contained in paragraph III.C.5 of the Hold Separate is to satisfy the purpose clause in paragraph II.J of the Order, in particular to ensure the continuing, viable and competitive operation of SFI. The proposed modification of paragraph III.C.5 of the Hold Separate would not in any way conflict with the purposes underlying the Order or the Hold Separate because, as modified, Solvay would be permitted to employ the Solvay Fluoropolymers Manager only (i) following the termination of such person's employment with SFI, a decision that reflects Dyneon's judgment that the Hold Separate Manager's continued service is not essential to the viability of the businesses it acquired and (ii) in a capacity where any

competitively sensitive information with respect to the business of SFI and Dyneon could not reasonably be used or disclosed by the Solvay Fluoropolymers Manager to the detriment of SFI or Dyneon or to otherwise affect competition in the market for PVDF or VF<sub>2</sub>. As Solvay seeks to employ Mr. Mularski at Solvay Minerals, an affiliate of Solvay that is not engaged in the production or sale of PVDF or VF<sub>2</sub>, and since Mr. Mularski's responsibilities will be primarily related to the sale of soda ash, there is no credible risk that Mr. Mularski will be in a position to use or disclose competitively sensitive information regarding the business of SFI or Dyneon in a manner adverse to the purposes of the Hold Separate or the Order.

Solvay notes that at the Closing, Dyneon acquired the outstanding shares of SFI, and as such, became the employer of the Solvay Fluoropolymers Employees, who are defined in paragraph I.FF of the Order as follows:

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

*Provided, however, that Solvay Fluoropolymers Employees do not include the . . . ["Solvay Retained Employees"].*

Dyneon's right to offer employment to any Solvay Fluoropolymers Employee, and Solvay's obligation not to take any actions that directly or indirectly

interfere with Dyneon's offer of employment to any one or more of the Solvay Fluoropolymers Employees are contained in paragraph II.D.6 of the Order:

(1) not later than forty five days before the Effective Date of Divestiture, Solvay shall: (i) provide to the Acquirer a list of all Solvay Fluoropolymers Employees; (ii) allow Acquirer an opportunity to interview any Solvay Fluoropolymers Employees; (iii) allow the Acquirer to inspect the personnel files and other documentation relating to such Solvay Fluoropolymers Employees;

(2) not later than thirty days before the Effective Date, Solvay shall provide an opportunity for the Acquirer . . . to make offers of employment to any one or more of the Solvay Fluoropolymers Employees;

(3) Solvay shall: (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the Solvay Fluoropolymers Employees . . . ; (ii) irrevocably waive any legal or equitable right to deter any Solvay Fluoropolymers Employee from accepting employment with the Acquirer . . . ;(iii) not interfere with the employment by the Acquirer of any Solvay Fluoropolymers Employee . . . .

Solvay is in full compliance with its obligations under paragraph II.D.6 of the Order. As the divestiture of the required assets to Dyneon was structured as a sale of all of the outstanding common stock of SFI to Dyneon, substantially all of the employees of SFI continued their employment with SFI after the Closing. Out of the 37 employees of SFI immediately prior to the Closing, a total of 36 employees, including Mr. Mularski, continued their employment with SFI immediately following the Closing. Dyneon, therefore, continued the employment of Mr. Mularski with SFI immediately following the Closing and had the option of continuing to employ Mr. Mularski at SFI going forward. As noted above, however, Mr. Mularski's employment with SFI will not

continue after February 28, 2003. Under these circumstances, and subject to Solvay's intention to employ Mr. Mularski as the Southern Key Accounts Manager for Solvay Minerals where he will primarily be engaged in the production and sale of soda ash, the hiring and employment of Mr. Mularski by Solvay will not in any way adversely affect SFI or Dyneon or otherwise affect competition in the markets for PVDF or VF<sub>2</sub>.

In addition, permitting Solvay to employ Mr. Mularski avoids a hardship to Mr. Mularski as a result of the loss of his employment with SFI. As Dyneon has determined that Mr. Mularski's employment with SFI will be terminated, Mr. Mularski must seek new employment. Given that Mr. Mularski is one of Solvay's former employees, his inability – under the relevant provisions of the Hold Separate – to seek a position with Solvay following his employment with SFI significantly increases the difficulty he will face in seeking and obtaining a new position. A modification of the Hold Separate as proposed in this petition will avoid this hardship to Mr. Mularski without causing any adverse competitive effects within the scope of the Order.

In support of Solvay's petition to reopen the Hold Separate, please find attached a redacted letter from Dyneon, asserting that Dyneon does not object to the employment of Mr. Mularski by Solvay in the position of Southern Key Accounts Manager for Solvay Minerals and that Dyneon accepts Solvay's representations that the proposed employment of Mr. Mularski would not adversely affect the continuing, viable and competitive operation of SFI.

**V. Request for Shortened Public Comment Period**


Pursuant to §2.51(c) of the Commission's Rules, Solvay also requests that the Commission exercise its discretion to shorten the public comment period from 30 days to provide for an early disposition of Solvay's petition. There were no public comments on the proposed divestiture to Dyneon save for certain comments from SFI employees (including Mr. Mularski) that discussed employment matters involving themselves and Dyneon. The limited nature of the proposed modification of the Hold Separate is such that there is no reasonable likelihood that such modification will have any effect on competition in the PVDF or VF<sub>2</sub> markets or on the efficacy of the divestiture of the required assets. Moreover, if Mr. Mularski is not quickly assured that he will be employed by Solvay following his employment at SFI, he may be forced to seek employment with a new employer other than Solvay. Given the lessened need for a longer public comment period and the significant hardship to Mr. Mularski that will be avoided by permitting him to commence employment with Solvay within a short time following his term of employment at SFI, Solvay respectfully requests that the Commission provide for an early disposition of Solvay's petition.



**VI. Conclusion**

The proposed modification of the Hold Separate will accomplish the purposes of the Hold Separate and the Order and comports with the requirements thereof. Accordingly, Solvay respectfully requests that the Commission approve its request to modify the Hold Separate as described in paragraph III above.

Respectfully submitted,

SOLVAY S.A. 



Alois Michiels  
Chairman of the Executive Committee

**EXHIBIT A (REDACTED VERSION)**

Dyneon LLC  
6744 33rd Street North  
Oakdale, MN 55128

Tel. (651) 733-7994  
Fax. (651) 575-1293

*A 3M Company*

**James E. Gregory**  
President



March 3, 2003

CONFIDENTIAL

By Hand

Donald S. Clark, Esq.  
U.S. Federal Trade Commission  
Bureau of Competition  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Re: Solvay/Ausimont Docket No. C-4046

Dear Mr. Clark:

Dyneon LLC, a Delaware limited liability company ("*Dyneon*"), submits this letter in connection with Solvay S.A.'s Petition to Reopen and Modify the Hold Separate Order, filed pursuant to § 2.51 of the Rules of Practice and Procedure of the Federal Trade Commission (the "*Commission*"), 16 C.F.R. et seq (2002).

Under the Hold Separate Order, the Commission appointed Gary Mularski, an employee of Solvay Fluoropolymers, Inc., a Delaware corporation ("*SFI*"), as the Solvay Fluoropolymers Manager to assist to assist the Hold Separate Trustee (as such terms are defined in the Hold Separate) in managing the businesses held separate pending divestiture. On January 21, 2003, Dyneon acquired SFI pursuant to approval by the Commission of Solvay's proposed divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business (as such terms are defined in the Hold Separate). The Hold Separate Order terminated on January 21, 2003, when Solvay divested the required assets.

## **MATERIAL REDACTED**


As set forth in its Petition to Reopen and Modify the Hold Separate Order, Solvay is seeking to hire Mr. Mularski, upon the termination of his employment with SFI, as the Southern Key Accounts Manager for Solvay Minerals, Inc. ("*Solvay Minerals*"), an affiliate of Solvay. Solvay has represented to Dyneon that Solvay Minerals is not engaged in the research, development, manufacture, marketing, sale, or

Donald S. Clark, Esq.  
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distribution of polyvinylidene fluoride ("PVDF") or vinylidene fluoride ("VF2"), and does not compete with SFI or Alventia LLC. Solvay has represented that Mr. Mularski's responsibilities as the Southern Key Accounts Manager for Solvay Minerals will be primarily related to the production and sale of soda ash, and will not relate, directly or indirectly, to the research, development, manufacture, marketing, sale, or distribution of PVDF or VF2. Solvay has further represented to Dyneon that Mr. Mularski's proposed employment with Solvay Minerals will be consistent with any continuing confidentiality, non-competition, or fiduciary obligations that Mr. Mularski may owe SFI or Dyneon.

Under these circumstances and subject to Solvay's representations, Dyneon does not object to the hiring of Mr. Mularski by Solvay to work at Solvay Minerals as the Southern Key Accounts Manager.

Sincerely,

  
James E. Gregory  
President  
Dyneon LLC