DATES: Complaint and Order issued February 14, 1995.[1]

FOR FURTHER INFORMATION CONTACT: Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

SUPPLEMENTARY INFORMATION: On Monday, November 28,1994, there was published in the **Federal Register**, 59 FR 60807, a proposed consent agreement with analysis In the Matter of American Home Products Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 95–5787 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0002]

Boston Scientific Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would permit, among other things, Boston Scientific Corporation, a Massachusetts-based manufacturer and marketer of catheters, to proceed with the proposed acquisitions of Cardiovascular Imaging Systems, Inc., and SCIMED Life Systems, Inc., but would require the respondent to grant a non-exclusive license to a specified package of patents and technology related to the manufacture, production and sale of intravascular ultrasound (IVUS) imaging catheters to the Hewlett-Packard Company or another Commission-approved licensee. When the consent becomes final, the license would have to be granted within ten days to Hewlett-Packard or within six months to another licensee. In addition, the consent agreement would require the respondent to obtain Commission approval, for ten years, before acquiring an interest greater than one percent in a company engaged in researching, developing or manufacturing IVUS catheters for sale in the United States.

DATES: Comments must be received on or before April 10, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Howard Morse or Robert Tovsky, FTS/S–3627, Washington, D.C. 20580. (202) 326–2949 or 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission (''Commission''), having initiated an investigation of the proposed acquisitions by Boston Scientific Corporation of Cardiovascular Imaging Systems, Inc. and SCIMED Life Systems, Inc., and it now appearing that Boston Scientific Corporation, hereinafter sometimes referred to as ''proposed respondent,'' is willing to enter into an agreement containing an order to license or divest certain assets, and to cease and desist from making certain acquisitions, and providing for other relief:

It Is Hereby Agreed by and between proposed respondent, by its duly authorized officers and attorney, and counsel for the Commission that:

1. Proposed respondent Boston Scientific Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware with its office and principal place of business located at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to license, divest and cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to license, divest and cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that is has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It Is Ordered that, as used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Boston Scientific'' means Boston Scientific Corporation, its predecessors, successors, assigns, subsidiaries, divisions, and groups and affiliates controlled by Boston Scientific, their successors and assigns, and the directors, officers, employees, agents, and representatives of each.

B. ''CVIS'' means Cardiovascular Imaging Systems, Inc.

C. ''SCIMED'' means SCIMED Life Systems, Inc.

D. ''Commission'' means the Federal Trade Commission.

E. ''CVIS Acquisition'' means the acquisition by Respondent of CVIS voting securities that is the subject of an Agreement and Plan of Merger and Reorganization entered into on or about August 31, 1994.

F. ''SCIMED Acquisition'' means the acquisition of SCIMED voting securities that is the subject of an Agreement and Plan of Merger entered into on or about November 8, 1994.

G. ''IVUS Catheters'' means intravascular ultrasound catheters, intracardiac ultrasound catheters, removable imaging cores used in intravascular or intracardiac ultrasound imaging, and intravascular imaging guidewires.

H. ''IVUS Technology Portfolio'' means:

1. all rights of Boston Scientific, CVIS and SCIMED under United States and foreign patents and patent applications filed in any country relating to IVUS Catheters, including rights under patents issued in the future in any country based upon patent applications filed, or inventor's certificates and invention disclosures made, on or before the License Date, and rights under all substitutions, continuations, continuations-in-part, divisions, renewals, reissues and extensions based on said patents and patent applications, including but not limited to the right to manufacture, use, sell, or offer for sale for any purpose or application any product suitable for use as an IVUS Catheter;

2. all trade secrets, technology and know-how of CVIS and SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by CVIS or SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters;

3. a copy of the IVUS Catheter customer lists of Boston Scientific and CVIS.

I. ''SCIMED IVUS Technology'' means all assets of SCIMED relating to IVUS Catheters, including but not limited to:

1. United States and foreign patents and patent applications filed in any country relating to IVUS Catheters;

2. all trade secrets, technology, and know-how of SCIMED relating to IVUS Catheters, including but not limited to, books and records, the results of research and development efforts, filings with the United States Food and Drug Administration, scientific and clinical reports, designs, manuals, drawings, and design, material and equipment specifications and any know-how used by SCIMED in conjunction with the research and development, manufacturing or marketing of IVUS Catheters; and

3. all IVUS Catheter prototypes.

J. ''License Date'' means the date on which the IVUS Technology Portfolio is licensed following Commission approval pursuant to Paragraph II or Paragraph V of this Order.

K. ''Licensee'' means the person to whom the IVUS Technology Portfolio is licensed pursuant to Paragraph II or Paragraph V of this Order.

L. ''IVUS Consoles'' means instruments used to deploy IVUS Catheters and to convert into display images signals transmitted by IVUS Catheters.

II

It Is Further Ordered that:

A. Within six (6) months of the date this Order becomes final, Respondent shall, absolutely and in good faith, grant pursuant to Paragraph II.B of this Order, at no minimum price and with no continuing royalties, a perpetual, non-exclusive license of the IVUS Technology Portfolio, together with the right to grant exclusive sub-licenses to any part of such IVUS Technology Portfolio, the right to grant exclusive sub-licenses to manufacture or sell any product pursuant to such IVUS Technology Portfolio, and the right to have IVUS Catheters manufactured and sold on its behalf by any person.

B. Respondent shall license the IVUS Technology Portfolio.

1. to Hewlett-Packard Company, within ten days after the date this Order becomes final, pursuant to, and in accordance with, the February 21, 1995 agreement between Respondent and Hewlett-Packard Company, which agreement is in Confidential Appendix II; or

2. to a person that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The purpose of the license is to create an independent competitor in the development, production and sale of IVUS Catheters and to remedy the lessening of competition resulting from the CVIS Acquisition and the SCIMED Acquisition as alleged in the Commission's Complaint.

C. For a period of three (3) years after the date this Order becomes final, upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall provide to the Licensee information, technical assistance and advice sufficient to effect the transfer to the Licensee of the IVUS Technology Portfolio, and to enable the Licensee to obtain all necessary United States Food and Drug Administration approvals or certifications obtained by CVIS or Boston Scientific with respect to, and to enable the Licensee to manufacture, all IVUS Catheters manufactured by CVIS at any time during the period commencing twelve (12) months prior to the date this Order becomes final and extending through the License Date. Upon reasonable notice and reasonable request from the Licensee, Boston Scientific shall also provide to the Licensee consultation with knowledgeable employees of Boston Scientific and training at the Licensee's facility for a period of time, not to exceed two (2) years, sufficient to satisfy the Licensee's management that its personnel are adequately trained in the design and manufacture of IVUS

Catheters. Respondent may require reimbursement from the Licensee for all its direct out-of-pocket expenses incurred in providing the services required by this Paragraph II.C of this Order.

D. Respondent shall not restrict any person employed by CVIS or SCIMED prior to the date this Order becomes final from accepting employment with the Licensee or, following employment of any such person by the Licensee, communicating to the Licensee any intellectual property included in the IVUS Technology Portfolio.

E. Pending the licensing of the IVUS Technology Portfolio, Respondent shall take such actions as are necessary to maintain the viability and marketability of the IVUS Technology Portfolio and to prevent the destruction, removal, wasting, deterioration, or impairment of the IVUS Technology Portfolio.

F. Respondent 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 specified in the Agreement to Hold Separate.

III

It Is Further Ordered that Respondent shall supply to the Licensee, for such period as the Licensee may request, up to three (3) years, on reasonable commercial terms and provisions, at Boston Scientific's cost or at such lower price as Boston Scientific and the Licensee may otherwise agree, for distribution and sale by the Licensee, such quantities and types of IVUS Catheters as may be requested by the Licensee, upon reasonable notice, from among the various types manufactured and sold by Boston Scientific during the period of such supply arrangement.

IV

It Is Further Ordered that, for a period of five (5) years from the date this Order becomes final, Respondent shall not offer, renew, extend or enter into any exclusive contract or agreement, or enforce directly or indirectly any exclusivity provision thereof, with any manufacturer of IVUS Consoles, relating to the development, manufacture or distribution of such units or relating to compatibility between the IVUS Consoles produced by such manufacturer and IVUS Catheters produced by any person.

V

It Is Further Ordered that:

A. If Boston Scientific has not licensed the IVUS Technology Portfolio as required by Paragraph II of this Order, the Commission may appoint a trustee to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology. In the event that the Commission or the Attorney General brings an action pursuant to 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, Boston Scientific 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 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 Respondent to comply with this Order.

B. If a trustee is appointed by the commission or a court pursuant to Paragraph V of this Order, Respondent 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 Respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions, divestitures, and licensing. 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.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to license the IVUS Technology Portfolio and to divest CVIS together with the SCIMED IVUS Technology.

3. Within ten (10) days after appointment of the trustee, Respondent 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 licensing or divestiture required by this Order.

4. The trustee shall have—

a. six (6) months from the date the Commission approves the trust agreement described in Paragraph V.B.3. to accomplish the licensing of the IVUS Technology Portfolio, which license shall be subject to the prior approval of the Commission. If, however, at the end of this six (6)-month period, the trustee has submitted a licensing candidate or believes that licensing can be achieved within a reasonable time, the licensing period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; and

b. if the trustee has not licensed the IVUS Technology Portfolio within the six (6)-month period described in Paragraph V.B.4.a., above, the trustee shall have an additional twelve (12) months to accomplish the divestiture of CVIS together with the SCIMED IVUS Technology, which divestiture shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12)-month period, the trustee has submitted a divestiture candidate 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; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the IVUS Technology Portfolio, CVIS and the SCIMED IVUS Technology and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the licensing or divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for 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 Respondent's absolute and unconditional obligation to license or divest at no minimum price. The licensing or divestiture shall be made in the manner and to a Licensee or acquirer approved by the Commission; provided, however, if the trustee receives bona fide offers from more than one entity, and if the Commission determines to approve more than one such entity, the trustee shall license or divest, as applicable, to the entity selected by Respondent from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, 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 Respondent, 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 licensing or 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 the Respondent, 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 licensing the IVUS Technology Portfolio, or divesting CVIS and the SCIMED IVUS Technology.

8. Respondent 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, 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 V.A. 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 licensing or divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the IVUS Technology Portfolio, CVIS or the SCIMED IVUS Technology.

12. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the licensing or divestiture.

VI

It Is Further Ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than one (1) percent of the stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in the research, development, or manufacture of IVUS Catheters for sale in the United States;

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture of IVUS Catheters for sale in the United States; or

C. Acquire exclusive rights to any patent or other technology relating to the manufacture or sale of IVUS Catheters in the United States

Provided, however, that this Paragraph VI shall not apply to the acquisition of products or services in the ordinary course of business.

VII

It Is Further Ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II and V of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the Order, including a description of all substantive contacts or negotiations for the licensing and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning licensing.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VIII

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 Order.

IX

It Is Further Ordered that Respondent, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five day's notice to Respondent, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, 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. Without restraint or interference from Respondent, to interview Respondent's officers, directors, or employees, who may have counsel present, regarding such matters.

X

It Is Further Ordered that this order shall terminate twenty (20) years from the date this order becomes final.

Appendix I

Agreement To Hold Separate

[Docket No. C– , File No. 951–0002]

Agreement To Hold Separate

This Agreement to Hold Separate (the ''Hold Separate'') is by and among the Boston Scientific Corporation (''Boston Scientific''), a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 1 Boston Scientific Place, Natick, Massachusetts, 01760–1537, 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 August 31, 1994, Boston Scientific entered into an agreement with Cardiovascular Imaging Systems, Inc. (''CVIS'') providing for the acquisition (hereinafter the ''CVIS

Acquisition'') of the voting securities of CVIS; and

Whereas, CVIS, with its principal office and place of business at 595 North Pastoria Avenue, Sunnyvale, California 94086, manufactures and sells intravascular ultrasound catheters and high frequency imaging units for use with such catheters; and

Whereas, on November 8, 1994, Boston Scientific entered into an agreement with SCIMED Life Systems, Inc. (''SCIMED'') providing for the acquisition (hereinafter the ''SCIMED Acquisition'') of the voting securities of SCIMED; and

Whereas, SCIMED, with its principal office and place of business at One SCIMED Place, Maple Grove, Minnesota 55311–1566, is conducting research and development with respect to IVUS Catheters; and

Whereas, if the Commission accepts the Agreement Containing Consent Order (''Consent Order''), the Commission will place it on the public record for a period of at least thirty (30) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of CVIS, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the 30-day public comment period), divestiture resulting from any proceeding challenging the legality of the CVIS Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the CVIS Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of CVIS and the Commission's right to seek a viable competitor to Boston Scientific; and

Whereas, the Commission has filed suit in the United States District Court for the District of Columbia (Civil Action No. 1:95 CV00198) seeking a preliminary injunction with respect to the CVIS Acquisition pending an administrative trial, and the Commission has authorized its staff to seek a preliminary injunction with respect to the SCIMED Acquisition pending an administrative trial; and

Whereas, the purpose of the Hold Separate is to:

(i) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending final acceptance or withdrawal of acceptance of the Consent Order by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules;

(ii) Preserve CVIS as a viable and competitive business, independent of Boston Scientific, and engaged in the research and development, manufacture and sale of IVUS Catheters and IVUS Consoles, pending licensing of the IVUS Technology Portfolio pursuant to Paragraph II of the Consent Order or pending licensing of the IVUS Technology Portfolio or divestiture of CVIS and the SCIMED IVUS Technology pursuant to Paragraph V of the Consent Order; and

(iii) Remedy any anticompetitive effects of the CVIS Acquisition; and

Whereas, Boston Scientific's entering into this Hold Separate shall in no way be construed as an admission by Boston Scientific that the CVIS Acquisition or the SCIMED Acquisition is illegal or would have any anticompetitive effects; and

Whereas, Boston Scientific understands that no act or transaction contemplated by this Hold Separate 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.

Now, Therefore, the Parties agree, and in consideration of the Commission's agreement that, unless it determines to reject the Consent Order, it will not seek further relief from Boston Scientific with respect to the CVIS Acquisition or the SCIMED Acquisition, except that the Commission may exercise any and all rights to enforce this Hold Separate and the Consent Order, once it becomes final, and in the event that the required licensing is not accomplished, to appoint a trustee to seek divestiture of CVIS and the SCIMED IVUS Technology, pursuant to the Consent Order, as follows:

1. Boston Scientific agrees to execute and be bound by the attached Consent Order.

2. If the Commission accepts the Consent Order for public comment, Boston Scientific and the Commission will move to stay the action for preliminary injunction pending in United States District Court with respect to the CVIS Acquisition until such time as the Commission withdraws such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules or finally accepts and issues the Consent Order; and, in the event the Commission finally accepts the Consent Order, the Commission will move to dismiss the preliminary injunction action.

3. The terms ''IVUS Catheters,'' ''IVUS Consoles,'' ''IVUS Technology Portfolio,'' and ''SCIMED IVUS Technology'' have the same definitions as in the Consent Order;

4. Boston Scientific agrees that from the date this Hold Separate is accepted until the earliest of the dates listed in subparagraphs 4.a, 4.b, 4.c or 4.d, it will comply with the provisions of paragraph 5 of this Hold Separate:

a. May 26, 1995, if the Commission has not made the Consent Order final or withdrawn its acceptance of the Consent Order by that date;

b. three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of § 2.34 of the Commission's Rules;

c. the date the licensing required under Paragraph II or V of the Consent Order is completed.

d. the date the divestiture required under Paragraph V of the Consent Corder is completed.

5. Boston Scientific shall hold CVIS as it is constituted on the date the CVIS Acquisition is consummated, separate and apart on the following terms and conditions:

a. CVIS, as defined in Paragraph I.B. of the Consent Order, shall be held separate and apart and shall be operated independently of Boston Scientific (meaning here and hereinafter, Boston Scientific excluding CVIS and excluding all personnel connected with CVIS as of the date this Hold Separate is signed) except to the extent that Boston Scientific must exercise direction and control over CVIS to assure compliance with this Hold Separate or with the Consent Order.

b. Boston Scientific shall not exercise direction or control over, or influence directly or indirectly, CVIS, the New Board (as defined in subparagraph 5.d), or any of its operations or businesses; provided, however, that Boston Scientific may exercise only such direction and control over CVIS as is necessary to assure compliance with this Hold Separate or with the Consent Order and provided further that Boston Scientific may (a) direct CVIS to consent that patent litigation between Boston Scientific and CVIS be stayed; (b) direct CVIS to consent to acceptance of SCIMED's position in the arbitration proceeding pending between CVIS and SCIMED; and (c) direct that Boston Scientific and CVIS enter into a non-exclusive, royalty-free cross-license of all their IVUS Catheter patents, provided however no such cross-license shall limit rights conferred to CVIS except to the extent it imposes identical limits on rights conferred to Boston

Scientific, and provided further that no such cross-license shall exclude any Boston Scientific patents relating to IVUS Catheters; and following execution of such cross-license, direct that the patent litigation between Boston Scientific and CVIS be dismissed.

c. Boston Scientific shall maintain the marketability, viability and competitiveness of CVIS, and shall not take such action that will cause or permit the destruction, removal, wasting, deterioration or impairment of CVIS, except in the ordinary course of business and except for ordinary wear and tear, and shall not sell, transfer, encumber (other than in the normal course of business), or otherwise impair the marketability, viability or competitiveness of CVIS.

d. Boston Scientific shall elect a three-person Board of Directors for CVIS (the ''New Board''). The New Board shall consist of two persons knowledgeable about IVUS Catheters, one of whom shall be named Chairman of the New Board, and who shall remain independent of Boston Scientific and competent to assure the continued viability and competitiveness of CVIS, and one New Board Member who is also an officer, agent or employee of Boston Scientific (the Boston Scientific New Board Member''). Except for the Boston Scientific New Board Member, Boston Scientific shall not permit any director, officer, employee or agent of Boston Scientific also to be a director, officer, employee or agent of CVIS. Each Board member shall enter into a confidentiality agreement agreeing to be bound by the terms and conditions of this Hold Separate.

e. Except as required by law and except to the extent that necessary information is exchanged in the course of evaluating and consummating the CVIS Acquisition, defending investigations or litigation, obtaining legal advice, or complying with this Hold Separate or the Consent Order, Boston Scientific shall not receive or have access to, or the use of, any material confidential information of CVIS or the activities of the New Board, not in the public domain. Boston Scientific may receive on a regular basis from CVIS aggregate financial information necessary and essential to allow Boston Scientific to file financial reports, tax returns and personnel reports. Boston Scientific and CVIS may also exchange confidential information, subject to appropriate confidentiality agreements, pursuant to agreements between CVIS and Boston Scientific for joint research or contract manufacture, on arms-length commercial terms, to the extent such agreements would be permissible between competitors under the antitrust laws. Any such information that is obtained pursuant to this subparagraph shall only be used for the purposes set out in this subparagraph. (''Material confidential information,'' as used in this Hold Separate, means competitively sensitive or proprietary information not independently known to Boston Scientific from sources other than CVIS or the New Board, as applicable, and includes but is not limited to customer lists, customers, price lists, prices, individual transactions, marketing methods, patents, technologies, processes, or other trade secrets).

f. Except as permitted by this Hold Separate, the New Board member appointed by Boston Scientific (''Boston Scientific New Board Member'') who is also an officer, agent, or employee of Boston Scientific shall not receive any CVIS material confidential information and shall not disclose any such information obtained through his or her involvement with CVIS to Boston Scientific or use it to obtain any advantage for Boston Scientific. The Boston Scientific New Board Member shall participate in matters that come before the New Board only for the limited purpose of considering any capital investment of over one million dollars ($1,000,000), approving any proposed budget and operating plans, authorizing dividends and repayment of loans consistent with the provisions hereof, reviewing any material transactions described in paragraph 5.g, and carrying out Boston Scientific's responsibilities under Hold Separate and the Consent Order. Except as permitted by the Hold Separate, the Boston Scientific New Board Member shall not participate in any other matter.

g. All material transactions, out of the ordinary course of business and not precluded by paragraph 5 hereof, shall be subject to a majority vote of the New Board (as defined in paragraph 5.d hereof).

h. Boston Scientific shall not change the composition of the New Board unless the Chairman of the New Board consents, or unless it is necessary to do so in order to assure compliance with this Hold Separate or with the Consent Order. The Chairman of the New Board shall have the power to remove members of the New Board for cause and to require Boston Scientific to appoint replacement members of the New Board. Boston Scientific shall not change the composition of the management of CVIS except that the New Board shall have the power to remove management employees for any legal reason. If the Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in paragraph 5.d. Boston Scientific shall circulate to the management employees of CVIS and appropriately display a notice of the Hold Separate and the Consent Agreement at a conspicuous place at all CVIS offices and facilities.

i. All earnings and profits of CVIS shall be retained separately by CVIS. If necessary, Boston Scientific shall provide CVIS with sufficient working capital to operate at current rates of operation, upon commercially reasonable terms.

j. Should the Federal Trade Commission seek in any proceeding to compel Boston Scientific to divest itself of CVIS or SCIMED or to compel Boston Scientific to divest any assets or businesses of CVIS and SCIMED that it may hold, or to seek any other injunctive or equitable relief, Boston Scientific shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the CVIS Acquisition or the SCIMED Acquisition. Boston Scientific also waives all rights to contest the validity of this Hold Separate.

6. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request and five day's notice to Boston Scientific, Boston Scientific shall permit any duly authorized representative(s) of the Commission:

a. Access during the office hours of Boston Scientific and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Boston Scientific or CVIS relating to compliance with this Hold Separate;

b. Without restraint or interference from Boston Scientific, to interview Boston Scientific's or CVIS' officers, directors or employees, who may have counsel present, regarding any such matters.

7. This agreement shall not be binding until approved by the Commission.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''the Commission'') has accepted, for public comment, from Boston Scientific Corporation (''Boston Scientific''), an agreement containing a consent order. This agreement has been placed on the public record for thirty days for

reception of comments from interested persons.

Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns the proposed acquisitions by Boston Scientific of Cardiovascular Imaging Systems, Inc. (''CVIS'') and SCIMED Life Systems, Inc. (''SCIMED''). The Commission's proposed complaint alleges that Boston Scientific and CVIS each develop, produce and market intravascular ultrasound (''IVUS'') catheters for use throughout the world. It also alleges that SCIMED has been working on the development of these products, has manufactured and tested prototypes, and is a likely entrant into the IVUS catheter market. IVUS catheters are used in the diagnosis and treatment of artery disease.

The agreement containing a consent order would, if finally accepted by the Commission, settle charges that the acquisitions may substantially lessen competition in the production and sale of IVUS catheters in the United States. The Commission has reason to believe that the acquisitions would have anticompetitive effects and would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The Commission has filed suit in the United States District Court for the District of Columbia to enjoin Boston Scientific's proposed acquisition of CVIS. That action is stayed by Commission acceptance of the proposed order for public comment, and would be dismissed in the event that the Commission makes final the order.

The Commission's proposed complaint in this matter alleges that Boston Scientific's proposed acquisition of CVIS would eliminate ongoing competition, result in substantially increased concentration, and allow Boston Scientific to exercise market power. It further alleges that Boston Scientific's proposed acquisition of SCIMED would eliminate ongoing competition between Boston Scientific and SCIMED in IVUS catheter research and development, and would eliminate SCIMED as a potential entrant into the IVUS catheter market. The effect of these acquisitions, the complaint alleges, is likely to be higher prices for IVUS catheters and diminished product innovation.

The order accepted for public comment contains provisions that would require Boston Scientific to license to Hewlett-Packard Company or to another person that receives the prior approval of the Commission a broad package of patents and technology relating to IVUS catheters. This package would include rights to Boston Scientific's IVUS catheter patents, as well as the patents and technology that Boston Scientific proposes to acquire from both CVIS and SCIMED.

The order also would require Boston Scientific to provide, on request by the licensee, certain technical assistance sufficient to facilitate the licensee's use of the licensed technology and patents to enter the IVUS catheter market. For IVUS catheters of the type currently offered by CVIS, this requirement includes assistance for a period of three years in manufacturing and obtaining regulatory approvals. It also requires Boston Scientific to allow the licensee, for a period of two years, to consult with Boston Scientific employees for training in the design and manufacture of IVUS catheters. The order would also require Boston Scientific to permit CVIS' and SCIMED's current employees to take employment with the licensee. In order to further facilitate entry into IVUS catheters, the order would prohibit Boston Scientific from entering into exclusive contracts with manufacturers of IVUS consoles that would exclude a new IVUS catheter producer from the market.

The order would further provide for an interim supply agreement between Boston Scientific and the licensee, to extend for a period of three years, which covers the time that such a licensee could be expected to require to enter the IVUS catheter market with commercial products that have obtained regulatory approval.

Under the terms of the order, Boston Scientific must, if it does not license Hewlett-Packard, grant a license to a Commission approved licensee within six months of the date the order becomes final. If Boston Scientific fails to do so, the Commission may appoint a trustee to license the IVUS patents and technology, and, if necessary, to divest CVIS together with SCIMED's IVUS technology and patents.

A hold separate agreement made a part of the consent requires Boston Scientific, until it accomplishes the licensing required by the order, or until the trustee accomplishes the licensing or divestiture required by the order, or until May 26, 1995 if the order is not made final by that date, to hold separate and preserve all of the assets and businesses acquired from CVIS.

For a period of ten years from its effective date, the order would also prohibit Boston Scientific from acquiring, without prior Commission approval, more than one percent of the stock of, or any other interest in, any company engaged in the research, development, or manufacture for sale of IVUS catheters in the United States, assets used or previously used for the manufacture of IVUS catheters for sale in the United States, or exclusive rights to patents or other technology used for the manufacture or sale of IVUS catheters in the United States.

The purpose of this analysis is to invite public comment concerning the consent order and any other aspect of the acquisition. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

Statement of Commissioner Mary L. Azcuenaga, Concurring in Part and Dissenting in Part, in Boston Scientific Corporation, File 951–0002

Today the Commission decides to publish for comment a proposed consent order to settle concerns arising from the proposed acquisitions by Boston Scientific of CVIS and SciMed. Although I have reason to believe that the proposed acquisitions would be unlawful and the proposed consent agreement appears likely to provide an appropriate remedy for the violations, two provisions of the proposed settlement are troubling: one is the negotiated agreement to curtail the public comment period; the second is the fixed date for the expiration of the hold separate agreement.

Although Boston Scientific may be able to show good reason why the public comment period under Section 2.34 of the Commission's Rules of Practice, 16 C.F.R. § 2.34, should be curtailed from the usual 60 days, it has made no attempt to do so. Instead, without any proffered justification, Boston Scientific and the staff have negotiated a 30-day public comment period. It should go without saying that the requirements of the Commission's Rules of Practice should not be a matter for negotiation.[1] The Commission's

[1] The rules have the force and effect of law and should not be taken lightly. Departing from the rules without justification leads to inequality of treatment and leaves the Commission open to charges of arbitrary and capricious decisionmaking.

The duration of the public comment period is not a trivial matter. *Cf.* the Tunney Act, 15 U.S.C. § 16,

acceptance of the negotiated term creates an unfortunate precedent. Future respondents are likely to seek comparable concessions, increasing both the public and private costs of law enforcement negotiations. To the extent that the order reduces the length of the period for public comment and no good cause for that departure from the Commission's rules having been shown, I dissent.

Nor should the commission condone fixing a date certain for termination of the hold-separate agreement.[2] This means that to preserve its options, the Commission must decide the matter by a date certain, which trivializes the decisionmaking process. The Commission can expedite matters and has done so when appropriate,[3] as consistent with a careful review of the merits. A willingness to act expeditiously is quite different from acquiescing in advance to a ''drop dead date'' that may leave the Commission unable fully to consider issues and conditions as they may then exist or as they may be revealed during the public comment period.[4]

[FR Doc. 95–5790 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–411]

The H.D. Lee Co., Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: This order reopens a 1965 consent order—which settled allegations that the respondent discriminated in the offering of advertising or promotional payments to its customers in connection with the resale of its wearing apparel—and sets aside the consent order pursuant to the Commission's Sunset Policy Statement, under which the Commission presumes that the public interest requires terminating competition orders that are more than 20 years old.

DATES: Consent order issued May 1, 1963.* Set aside order issued February 14, 1995.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, FTC/S–2115, Washington, DC 20580. (202) 326–2861.

SUPPLEMENTARY INFORMATION: In the Matter of The H.D. Lee Co., Inc. The prohibited trade practices and/or corrective actions are removed as indicated.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 2, 49 Stat. 1526; 25 U.S.C. 13)

In the Matter of The H.D. Lee Co., Inc., a corporation; Order Reopening Proceeding and Setting Aside Order.

[Docket No. C–411]

Commissioners: Janet D. Steiger, Chairman Mary L. Azcuenaga, Roscoe B. Starek, III, Christine A. Varney.

On October 26, 1994, The Lee Apparel Company, Inc., formerly The H.D. Lee Co., Inc. (''Lee'') filed its Petition To Reopen and Set Aside Consent Order (''Petition'') in this matter. Lee requests that the Commission set aside the 1965 consent order in this matter pursuant to Rule 1.51 of the Commission's Rules of Practice, 16 C.F.R. § 2.51, and the *Statement of Policy With Respect to Duration of Competition Orders and Statement of Intention to Solicit Public Comment With Respect to Duration of Consumer Protection Orders,* issued July 22, 1994, published at 59 Fed. Reg. 45,286–92 (Sept. 1, 1994) (''Sunset Policy Statement''). In the Petition, Lee affirmatively states that it has not engaged in any conduct violating the terms of the order. The Petition was placed on the public record, and the thirty-day comment period expired on December 15, 1994. No comments were received.

The Commission in its July 22, 1994, Sunset Policy Statement said, in relevant part, that ''effective immediately, the Commission will presume, in the context of petitions to reopen and modify existing orders, that the public interest requires setting aside orders in effect for more than twenty years.'' [1] The Commission's order in Docket No. C–411 became final on August 9, 1965, and has been in effect for more than twenty-nine years. Consistent with the Commission's July 22, 1994, Sunset Policy Statement, the presumption is that the order should be terminated. Nothing to overcome the presumption having been presented, the Commission has determined to reopen the proceeding and set aside the order in Docket No. C–411.

Accordingly, it is ordered that this matter be, and it hereby is, reopened:

It is further ordered that the Commission's order in Docket No. C–411 be, and it hereby is, set aside, as of the effective date of this order.

By the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–5791 Filed 3–8–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 951 0012]

Service Corporation International; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition—in connection with Service Corporation International's acquisition of Uniservice Corporation—this consent agreement, accepted subject to final Commission approval, would require, among other things, the Texas corporation to divest, to a Commission-approved acquirer, the Uniservice Corporation assets and businesses in Medford, Oregon, within twelve months or transfer responsibility for the divestiture to a trustee appointed by the Commission, and to obtain prior Commission approval, for a period of ten years, before acquiring any interest in funeral establishments or cemeteries in Jackson County, Oregon.

DATES: Comments must be received on or before May 8, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: K. Shane Woods or Charles A. Harwood, FTC/Seattle Regional Office, 915 Second Ave., Suite 2806, Seattle, WA. 98174. (206) 220–6350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will

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which requires a 60-day public comment period for Department of Justice antitrust consent orders. The Tunney Act also provides that the 60-day public comment period ''shall not be shortened except by order of the district court upon a showing that (1) extraordinary circumstances require such shortening and (2) such shortening is not adverse to the public interest.'' 15 U.S.C. § 16(d).

[2] A hold separate agreement preserves a viable and competitive business, independent of the acquirer, in part to ensure the Commission's ability to require a divestiture. When the hold separate agreement expires, the parties are free to consummate their transaction.

[3] Expedited treatment for one respondent means moving that matter to the front of the queue. The Commission ordinarily has required a showing that such treatment is warranted.

[4] The Commission and the public interest would be disserved to the extent that useful comments from the public are abbreviated or perhaps not even submitted because of the shortened public comment period.

* The consent order was made effective on August 9, 1965.

[1] *See* Sunset Policy Statement, 59 FR at 45,289.