

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Julie Brill  
Maureen K. Ohlhausen  
Joshua D. Wright

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|---------------------------|---|---------------|
| _____                     | ) |               |
| In the Matter of          | ) |               |
|                           | ) |               |
| ACTAVIS, INC.,            | ) |               |
| a corporation;            | ) |               |
|                           | ) | Docket No. C- |
| and                       | ) |               |
|                           | ) |               |
| WARNER CHILCOTT PLC,      | ) |               |
| a public limited company. | ) |               |
| _____                     | ) |               |

**DECISION AND ORDER**  
**[Public Record Version]**

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition by Respondent Actavis Inc. (“Actavis”) of the voting securities of Respondent Warner Chilcott plc, hereinafter Respondents, having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 the Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order

to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement 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 makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Actavis is a corporation organized, existing and doing business under and by virtue of the laws of the State of Nevada, with its headquarters address located at Morris Corporate Center III, 400 Interpace Parkway, Parsippany, NJ 07054.
2. Respondent Warner Chilcott plc is a corporation organized, existing and doing business under and by virtue of the laws of the Republic of Ireland with its headquarters address located at 1 Grand Canal Square, Docklands, Dublin 2, Ireland.
3. The Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

## **ORDER**

### I.

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

- A. “Actavis” means Actavis, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Actavis, Inc. (including, without limitation, Actavis Limited, Actavis Ireland Holding Limited, Actavis W.C. Holding LLC and Actavis W.C. Holding 2 LLC), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition, Actavis shall include Warner Chilcott.
- B. “Warner Chilcott” means Warner Chilcott plc, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Warner Chilcott plc, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Respondents” means Actavis and Warner Chilcott, individually and collectively.

- E. “Acquirer(s)” means the following:
1. a Person specified by name in this Order to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission’s determination to make this Order final and effective; or
  2. a Person approved by the Commission to acquire particular assets or rights that a Respondent(s) is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.
- F. “Acquisition” means Respondent Actavis’s acquisition of the voting securities of Respondent Warner Chilcott. The acquisition is contemplated pursuant to a *Transaction Agreement* by and among Warner Chilcott, Actavis Limited, Actavis Ireland Holding Limited, Actavis W.C. Holding LLC, and Actavis W.C. Holding 2 LLC, dated as of May 19, 2013, submitted to the Commission.
- G. “Acquisition Date” means the date on which the Acquisition is consummated.
- H. “Agency(ies)” means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term “Agency” includes, without limitation, the United States Food and Drug Administration (“FDA”).
- I. “Amneal” means Amneal Pharmaceuticals L.L.C., a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its headquarters address located at 440 U.S. Highway 22 East, Suite 104, Bridgewater, New Jersey 08807.
- J. “Atelvia Patents” means the following United States patents: US 5,583,122, US 5,622,721, US 7,645,459, US 7,645,460, US 8,246,989, and any re-examinations and re-issues of the foregoing patents, and any patents claiming priority thereto.
- K. “Application(s)” means all of the following: “New Drug Application” (“NDA”), “Abbreviated New Drug Application” (“ANDA”), “Supplemental New Drug Application” (“SNDA”), or “Marketing Authorization Application” (“MAA”), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314 et seq., and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between a Respondent and the FDA related thereto. The term “Application” also includes includes an “Investigational New Drug Application” (“IND”) filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, registration dossier, drafts and data necessary for the preparation thereof, and all correspondence between a Respondent and the FDA related thereto.

- L. “Business” means the research, Development, manufacture, commercialization, distribution, marketing, importation, advertisement and sale of a Product.
- M. “Categorized Assets” means the following assets and rights of Respondent Actavis:
1. all rights to all of the Applications related to the specified Divestiture Product;
  2. all Product Intellectual Property related to the specified Divestiture Product that is not Product Licensed Intellectual Property;
  3. all Product Approvals related to the specified Divestiture Product;
  4. all Product Manufacturing Technology related to the specified Divestiture Product that is not Product Licensed Intellectual Property;
  5. all Product Marketing Materials related to the specified Divestiture Product;
  6. all Product Scientific and Regulatory Material related to the specified Divestiture Product;
  7. all Website(s) related exclusively to the specified Divestiture Product;
  8. the content related exclusively to the specified Divestiture Product that is displayed on any Website that is not dedicated exclusively to the specified Divestiture Product;
  9. a list of all of the NDC Numbers related to the specified Divestiture Product, and rights, to the extent permitted by Law:
    - a. to require Respondents to discontinue the use of those NDC Numbers in the sale or marketing of the specified Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Acquisition Date and *except* as may be required by applicable Law or as permitted in the applicable Remedial Agreement;
    - b. to prohibit Respondents from seeking from any customer any type of cross-referencing of those NDC Numbers with any Retained Product(s) *except* for returns, rebates, allowances, and adjustments for such Product sold prior to the Acquisition Date and *except* as may be required by applicable Law;
    - c. to seek to change any cross-referencing by a customer of those NDC Numbers with a Retained Product (including the right to receive notification from the Respondents of any such cross-referencing that is discovered by Respondent);
    - d. to seek cross-referencing from a customer of the Respondent’s NDC Numbers related to such Divestiture Product with the Acquirer’s NDC Numbers related to such Divestiture Product;
    - e. to approve the timing of Respondent’s discontinued use of those NDC Numbers in the sale or marketing of such Divestiture Product *except* for returns, rebates, allowances, and adjustments for such Divestiture Product

sold prior to the Acquisition Date and *except* as may be required by applicable Law or as permitted in the applicable Remedial Agreement; and

- f. to approve any notification(s) from Respondents to any customer(s) regarding the use or discontinued use of such NDC numbers by the Respondents prior to such notification(s) being disseminated to the customer(s);
10. all Product Development Reports related to the specified Divestiture Product;
11. at the option of the Acquirer of the specified Divestiture Product, all Product Assumed Contracts related to the specified Divestiture Product (copies to be provided to that Acquirer on or before the Closing Date);
12. all patient registries related to the specified Divestiture Product, and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects related to the specified Divestiture Product (including, without limitation, any Risk Evaluation Mitigation Strategy as defined by the FDA);
13. for any specified Divestiture Product that has been marketed or sold by Respondent Actavis prior to the Closing date, a list specifying the High Volume Accounts and including: (i) the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the specified Divestiture Product on behalf of the High Volume Account and his or her business contact information, and (ii) net sales (in units and dollars of the specified Divestiture Product on an annual, quarterly, and monthly basis to that High Volume Account);
14. for each specified Divestiture Product that is a Contract Manufacture Product:
  - a. a list of the inventory levels (weeks of supply) for each customer (*i.e.*, retailer, group purchasing organization, wholesaler or distributor) as of the Closing Date; and
  - b. anticipated reorder dates for each customer as of the Closing Date;
15. at the option of the Acquirer of the specified Divestiture Product and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods related to the specified Divestiture Product;
16. copies of all unfilled customer purchase orders for the specified Divestiture Product as of the Closing Date, to be provided to the Acquirer of the specified Divestiture Product not later than five (5) days after the Closing Date;
17. at the option of the Acquirer of the specified Divestiture Product, all unfilled customer purchase orders for the specified Divestiture Product; and
18. all of the Respondent's books, records, and files directly related to the foregoing;

*provided, however,* that “Categorized Assets” shall not include: (i) documents relating to the Respondent’s general business strategies or practices relating to the conduct of its Business of generic pharmaceutical Products, where such documents do not discuss with particularity the specified Divestiture Product; (ii) administrative, financial, and accounting records; (iii) quality control records that are determined not to be material to the manufacture of the specified Divestiture Product by the Interim Monitor or the Acquirer of the specified Divestiture Product; (iv) formulas used to determine the final pricing of any Divestiture Product and/or Retained Products to customers and competitively sensitive pricing information that is exclusively related to the Retained Products; (v) any real estate and the buildings and other permanent structures located on such real estate; and (vi) all Product Licensed Intellectual Property;

*provided further, however,* that in cases in which documents or other materials included in the assets to be divested contain information: (i) that relates both to the specified Divestiture Product and to Retained Products or Businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the specified Divestiture Product; or (ii) for which Respondents have a legal obligation to retain the original copies, Respondents shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer of the specified Divestiture Product, Respondents shall provide that Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this provision is to ensure that Respondents provides the Acquirer with the above-described information without requiring Respondents completely to divest itself of information that, in content, is also related to Retained Product(s).

- N. “cGMP” means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.
- O. “Clinical Trial(s)” means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.
- P. “Closing Date” means, as to each Divestiture Product, the date on which a Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey assets related to such Divestiture Product to an Acquirer pursuant to this Order.
- Q. “Confidential Business Information” means all information owned by, or in the possession or control of, any Respondent that is not in the public domain and that is

directly related to the conduct of the Business related to a Divestiture Product(s). The term “Confidential Business Information” *excludes* the following:

1. information relating to any Respondent’s general business strategies or practices that does not discuss with particularity the Divestiture Products;
2. information specifically excluded from the Divestiture Product Assets conveyed to the Acquirer of the related Divestiture Product(s);
3. information that is contained in documents, records or books of any Respondent that is provided to an Acquirer by a Respondent that is unrelated to the Divestiture Products acquired by that Acquirer or that is exclusively related to Retained Product(s); and
4. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

R. “Contract Manufacture” means, the following:

1. to manufacture, or to cause to be manufactured, a Contract Manufacture Product on behalf of an Acquirer;
2. to manufacture, or to cause to be manufactured, a Product that is the therapeutic equivalent (as that term is defined by the FDA) and in the identical dosage strength, formulation and presentation as a Contract Manufacture Product on behalf of an Acquirer; and
3. to provide, or to cause to be provided, any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of a Contract Manufacture Product on behalf of an Acquirer.

S. “Contract Manufacture Product(s)” means:

1. the Estradiol Group One Products; and
2. any ingredient, material, or component used in the manufacture of any of the foregoing Products including the active pharmaceutical ingredient, excipients or packaging materials;

*provided however*, that, with the consent of the Acquirer of the specified Divestiture Product, a Respondent may substitute a therapeutic equivalent (as that term is defined by the FDA) form of such Product in performance of that Respondent’s agreement to Contract Manufacture.

T. “Development” means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the

manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. “Develop” means to engage in Development.

- U. “Direct Cost” means a cost not to exceed the cost of labor, material, travel and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service. “Direct Cost” to the Acquirer for its use of any of a Respondent’s employees’ labor shall not exceed the average hourly wage rate for such employee;

*provided, however*, in each instance where: (i) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, “Direct Cost” means such cost as is provided in such Remedial Agreement for that Divestiture Product.

- V. “Divestiture Product(s)” means, the following, individually and collectively:

1. the Estradiol Group One Products;
2. the Estradiol Group Two Products; and
3. the Risedronate Products.

- W. “Divestiture Product Agreement(s)” mean, the following:

1. the *Asset Purchase Agreement* between Watson Laboratories, Inc.-Florida and Amneal Pharmaceuticals, dates as of September 11, 2013;
2. the *Asset Purchase Agreement* between Watson Laboratories, Inc. and Amneal Pharmaceuticals, dated as of September 11, 2013;
3. the *Supply Agreement* between Watson Laboratories, Inc. and Amneal Pharmaceuticals LLC, dated as of September 11, 2013; and
4. all amendments, exhibits, attachments, agreements and schedules thereto, related to the Divestiture Product Assets that have been approved by the Commission to accomplish the requirements of this Order. The Divestiture Product Agreements are contained in Non-Public Appendix I.

- X. “Divestiture Product Assets” means all rights, title and interest in and to all assets related to the Business within the Geographic Territory of Respondent Actavis related to each of the respective Divestiture Products, to the extent legally transferable, including, without limitation, the Categorized Assets related to each of the Divestiture Products, and the following:

1. all litigation files and any related attorney work-product in the possession of Respondent Actavis’ outside legal counsel related to each of the infringement suits filed by Respondent Warner Chilcott related to the Risedronate Products and the Estradiol Group Two Products;



2. waivers of any conflicts of interest to allow Respondent Actavis's outside legal counsel to represent the Acquirer in any ongoing patent litigation related to the Risedronate Products and the Estradiol Group Two Products.

Y. "Divestiture Product Core Employees" means the Product Research and Development Employees and the Product Manufacturing Employees related to each Divestiture Product.

Z. "Divestiture Product License" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to all Product Licensed Intellectual Property and all Product Manufacturing Technology related to general manufacturing know-how that was owned, licensed, or controlled by Respondent Actavis exclusively for the purposes of:

1. researching and Developing the specified Divestiture Products for marketing, distribution or sale within the Geographic Territory;
2. using, making, having made, distributing, offering for sale, promoting, advertising, or selling the specified Divestiture Products within the Geographic Territory;
3. importing or exporting the specified Divestiture Products to or from the Geographic Territory to the extent related to the marketing, distribution or sale of the specified Divestiture Products in the Geographic Territory; and
4. having the specified Divestiture Products made anywhere in the World for distribution or sale within, or import into the Geographic Territory;

*provided however*, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party entered into by a Respondent prior to the Acquisition, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to that Respondent.

AA. "Divestiture Product Releasee(s)" means the following Persons:

1. the Acquirer for the assets related to a particular Divestiture Product;
2. any Person controlled by or under common control with that Acquirer; and
3. any Manufacturing Designees, licensees, sublicensees, manufacturers, suppliers, distributors, and customers of that Acquirer, or of such Acquirer-affiliated entities.

BB. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to Paragraph IV of this Order.

CC. "Domain Name" means the domain name(s) (universal resource locators), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration. "Domain Name" shall not include any trademark or service mark rights to such domain names other than the rights to the Product Trademarks required to be divested.

- DD. “Drug Master Files” means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.
- EE. “Estradiol Group One Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Actavis pursuant to the following Applications:
1. ANDA No. 078892;
  2. ANDA No. 078267; and,
  3. supplements, amendments, or revisions thereto.
- FF. “Estradiol Group Two Products” means the following: all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Actavis pursuant to the following Application: ANDA No. 202982, and any supplements, amendments, or revisions thereto.
- GG. “Geographic Territory” shall mean the United States of America, including all of its territories and possessions, unless otherwise specified.
- HH. “Government Entity” means any Federal, state, local or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.
- II. High Volume Account(s)” means any retailer, group purchasing organization, wholesaler or distributor whose annual or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Divestiture Product in the United States of America from Respondent Actavis was, or is projected to be among the top twenty highest of such purchase amounts by the Respondent’s U.S. customers on any of the following dates: (i) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (ii) the end of the last quarter that immediately preceded the Acquisition Date; (iii) the end of the last quarter that immediately preceded the Closing Date for the relevant assets; or (iv) the end of the last quarter following the Acquisition or the Closing Date.
- JJ. “Interim Monitor” means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.
- KK. “Law” means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.
- LL. “Lo Loestrin Patents” means the following United States patents: US 5,552,394, US 7,704,984, and any re-examinations and re-issues of the foregoing patent, and any patents claiming priority thereto.
- MM. “Manufacturing Designee” means any Person other than the Respondents that has been designated by an Acquirer to manufacture a Divestiture Product for that Acquirer.

- NN. “NDC Numbers” means the National Drug Code numbers, including both the labeler code assigned by the FDA and the additional numbers assigned by an Application holder as a product code for a specific Product.
- OO. “Order Date” means the date on which the final Decision and Order in this matter is issued by the Commission.
- PP. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- QQ. “Patent(s)” means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case filed, or in existence, on or before the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.
- RR. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.
- SS. “Product(s)” means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient and/or that is the subject of an Application.
- TT. “Product Approval(s)” means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of a Product within the United States of America, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application related to that Product.
- UU. “Product Assumed Contracts” means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract):
1. that make specific reference to the specified Divestiture Product and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the specified Divestiture Product from a Respondent unless such contract applies generally to that Respondent’s sales of Products to that Third Party;
  2. pursuant to which a Respondent purchases the active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) or had planned to purchase the

active pharmaceutical ingredient(s) or other necessary ingredient(s) or component(s) from any Third Party for use in connection with the manufacture of the specified Divestiture Product;

3. relating to any Clinical Trials involving the specified Divestiture Product;
4. with universities or other research institutions for the use of the specified Divestiture Product in scientific research;
5. relating to the particularized marketing of the specified Divestiture Product or educational matters relating solely to the specified Divestiture Product(s);
6. pursuant to which a Third Party manufactures the specified Divestiture Product on behalf of a Respondent;
7. pursuant to which a Third Party provides any part of the manufacturing process including, without limitation, the finish, fill, and/or packaging of the specified Divestiture Product on behalf of a Respondent;
8. pursuant to which a Third Party provides the Product Manufacturing Technology related to the specified Divestiture Product to a Respondent;
9. pursuant to which a Third Party is licensed by a Respondent to use the Product Manufacturing Technology related to the specified Divestiture Product;
10. constituting confidentiality agreements involving the specified Divestiture Product;
11. involving any royalty, licensing, covenant not to sue, or similar arrangement involving the specified Divestiture Product;
12. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the specified Divestiture Product to a Respondent including, but not limited to, consultation arrangements; and/or
13. pursuant to which any Third Party collaborates with a Respondent in the performance of Business of the specified Divestiture Product;

*provided, however*, that where any such contract or agreement also relates to a Retained Product(s), Respondents shall assign the Acquirer all such rights under the contract or agreement as are related to the specified Divestiture Product, but concurrently may retain similar rights for the purposes of the Retained Product(s).

- VV. “Product Copyrights” means rights to all original works of authorship of any kind directly related to a Divestiture Product and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of that Product or of any materials used in the research, Development, manufacture, marketing or sale of that Product, including all copyrights in

raw data relating to Clinical Trials of that Product, all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, that Product's sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees of a Respondent who accept employment with an Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to that Product or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA or any other Agency.

WW. "Product Development Reports" means:

1. Pharmacokinetic study reports related to the specified Divestiture Product;
2. Bioavailability study reports (including reference listed drug information) related to the specified Divestiture Product;
3. Bioequivalence study reports (including reference listed drug information) related to the specified Divestiture Product;
4. all correspondence, submissions, notifications, communications, registrations or other filings made to, received from or otherwise conducted with the FDA relating to the Application(s) related to the specified Divestiture Product;
5. annual and periodic reports related to the above-described Application(s), including any safety update reports;
6. FDA approved Product labeling related to the specified Divestiture Product;
7. currently used or planned product package inserts (including historical change of controls summaries) related to the specified Divestiture Product;
8. FDA approved patient circulars and information related to the specified Divestiture Product;
9. adverse event reports, adverse experience information, descriptions of material events and matters concerning safety or lack of efficacy related to the specified Divestiture Product;
10. summary of Product complaints from physicians related to the specified Divestiture Product;

11. summary of Product complaints from customers related to the specified Divestiture Product;
12. Product recall reports filed with the FDA related to the specified Divestiture Product, and all reports, studies and other documents related to such recalls;
13. investigation reports and other documents related to any out of specification results for any impurities found in the specified Divestiture Product;
14. reports related to the specified Divestiture Product from any consultant or outside contractor engaged to investigate or perform testing for the purposes of resolving any product or process issues, including without limitation, identification and sources of impurities;
15. reports of vendors of the active pharmaceutical ingredients, excipients, packaging components and detergents used to produce the specified Divestiture Product that relate to the specifications, degradation, chemical interactions, testing and historical trends of the production of the specified Divestiture Product;
16. analytical methods development records related to the specified Divestiture Product;
17. manufacturing batch records related to the specified Divestiture Product;
18. stability testing records related to the specified Divestiture Product;
19. change in control history related to the specified Divestiture Product; and
20. executed validation and qualification protocols and reports related to the specified Divestiture Product.

XX. "Product Employee Information" means the following, for each Divestiture Product Core Employee, as and to the extent permitted by Law:

1. a complete and accurate list containing the name of each Divestiture Product Core Employee (including former employees who were employed by the specified Respondent within ninety (90) days of the execution date of any Remedial Agreement);
2. with respect to each such employee, the following information:
  - a. the date of hire and effective service date;
  - b. job title or position held;
  - c. a specific description of the employee's responsibilities related to the relevant Divestiture Product; *provided, however*, in lieu of this description, the specified Respondent may provide the employee's most recent performance appraisal;
  - d. the base salary or current wages;
  - e. the most recent bonus paid, aggregate annual compensation for the relevant

Respondent's last fiscal year and current target or guaranteed bonus, if any;

- f. employment status (*i.e.*, active or on leave or disability; full-time or part-time);
  - g. and any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees;
3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

YY. "Product Intellectual Property" means all of the following related to a Divestiture Product (other than Product Licensed Intellectual Property):

1. Patents;
2. Product Copyrights;
3. Product Trademarks, Product Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information; and
4. rights to obtain and file for patents, trademarks, and copyrights and registrations thereof and to bring suit against a Third Party for the past, present or future infringement, misappropriation, dilution, misuse or other violations of any of the foregoing;

*provided, however*, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Actavis", "Warner Chilcott", or the related corporate logos thereof, or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by the Respondents or the related corporate logos thereof, or general registered images or symbols by which Actavis or Warner Chilcott can be identified or defined;

*provided, further, however*, Product Intellectual Property does not include the Zenchant® trademark and related copyrights.

ZZ. "Product Licensed Intellectual Property" means the following:

1. Patents that are related to the specified Divestiture Product that a Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for Retained Product(s) of a Respondent that has been marketed or sold on an extensive basis by the Respondent within the two-year period immediately preceding the Acquisition; and
2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure

thereof, that are related to the specified Divestiture Product and that a Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for Retained Product(s) of a Respondent that has been marketed or sold on an extensive basis by a Respondent within the two-year period immediately preceding the Acquisition.

- AAA. “Product Manufacturing Employees” means all salaried employees of a Respondent who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the specified Divestiture Product (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.
- BBB. “Product Manufacturing Technology” means all of the following related to a Divestiture Product:
1. all technology, trade secrets, know-how, formulas, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of that Product, including, but not limited to, the following: all product specifications, processes, analytical methods, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;
  2. all ingredients, materials, or components used in the manufacture of that Product including the active pharmaceutical ingredient, excipients or packaging materials; and,
  3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer’s option, all such equipment used to manufacture that Product.
- CCC. “Product Marketing Materials” means all marketing materials used specifically in the marketing or sale of the specified Divestiture Product in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the specified Divestiture Product.



- DDD. “Product Research and Development Employees” means all salaried employees of a Respondent who have directly participated in the research, Development, regulatory approval process, or clinical studied of the specified Divestiture Product (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) with the eighteen (18) month period immediately prior to the Closing Date.
- EEE. “Product Scientific and Regulatory Material” means all technological, scientific, chemical, biological, pharmacological, toxicological, regulatory and Clinical Trial materials and information related to a Product.
- FFF. “Product Trade Dress” means the current trade dress of a Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.
- GGG. “Product Trademark(s)” means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith, for a Product.
- HHH. “Proposed Acquirer” means a Person proposed by a Respondent (or a Divestiture Trustee) to the Commission and submitted for the approval of the Commission as the acquirer for particular assets or rights required to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed pursuant to this Order.
- III. “Remedial Agreement(s)” means the following:
1. any agreement between a Respondent and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
  2. any agreement between a Respondent and a Third Party to effect the assignment of assets or rights of a Respondent related to a Divestiture Product to the benefit of an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission’s determination to make this Order final and effective;
  3. any agreement between a Respondent and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be

assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, including without limitation, any agreement by a Respondent to supply specified products or components thereof, and that has been approved by the Commission to accomplish the requirements of this Order; and/or

4. any agreement between a Respondent and a Third Party to effect the assignment of assets or rights of a Respondent related to a Divestiture Product to the benefit of an Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

JJJ. “Retained Product” means any Product(s) other than a Divestiture Product.

KKK. “Right of Reference or Use” means the authority to rely upon, and otherwise use, an investigation for the purpose of obtaining approval of an Application or to defend an Application, including the ability to make available the underlying raw data from the investigation for FDA audit.

LLL. “Risedronate Products” means all Products in Development, manufactured, marketed, sold, owned or controlled by Respondent Actavis pursuant to the following Application: ANDA No. 203090, and any supplements, amendments, or revisions thereto.

MMM. “Supply Cost” means a cost not to exceed the Respondent’s average direct per unit cost in United States dollars to manufacture the specified Divestiture Product for the twelve (12) month period immediately preceding the Acquisition Date. “Supply Cost” shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (i) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, “Supply Cost” means the cost as specified in such Remedial Agreement for that Divestiture Product.

NNN. “Technology Transfer Standards” means requirements and standards sufficient to ensure that the information and assets required to be delivered to an Acquirer pursuant to this Order are delivered in an organized, comprehensive, complete, useful, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

1. designating employees of a Respondent knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to each of the Divestiture Products who will be responsible for communicating directly with the Acquirer or its Manufacturing Designee, and the Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;
2. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Divestiture Product that are acceptable to the Acquirer;
3. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all

other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Manufacturing Designee; and

4. providing, in a timely manner, assistance and advice to enable the Acquirer or its Manufacturing Designee to:
  - a. manufacture the specified Divestiture Product in the quality and quantities achieved by the Respondent, or the manufacturer and/or developer of such Divestiture Product;
  - b. obtain any Product Approvals necessary for the Acquirer or its Manufacturing Designee, to manufacture, distribute, market, and sell the specified Divestiture Product in commercial quantities and to meet all Agency-approved specifications for such Divestiture Product; and
  - c. receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Divestiture Product.

OOO. “Third Party(ies)” means any non-governmental Person other than the following: the Respondents; or, the Acquirer of particular assets or rights pursuant to this Order.

PPP. Website” means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by the Respondent; *provided, however*, “Website” shall not include the following: (i) content owned by Third Parties and other Product Intellectual Property not owned by a Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that a Respondent can convey its rights, if any, therein; or (ii) content unrelated to any of the Divestiture Products.

## II.

### **IT IS FURTHER ORDERED** that:

- A. Not later than the earlier of: (i) ten (10) days after the Acquisition Date or (ii) ten (10) days after the Order Date, Respondent Actavis shall divest the Divestiture Product Assets and grant the related Divestiture Product License, absolutely and in good faith, to Amneal pursuant to, and in accordance with, the Divestiture Product Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Amneal or to reduce any obligations of Respondent Actavis under such agreements), and each such agreement, if it becomes a Remedial Agreement related to the Divestiture Product Assets is incorporated by reference into this Order and made a part hereof;

*provided, however,* that if Respondent Actavis has divested the Divestiture Product Assets and granted the related Divestiture Product License to Amneal prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Actavis that Amneal is not an acceptable purchaser of the Divestiture Product Assets, then Respondent Actavis shall immediately rescind the transaction with Amneal, in whole or in part, as directed by the Commission, and shall divest the Divestiture Product Assets and grant the related Divestiture Product License within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

*provided further* that if Respondent Actavis has divested the Divestiture Product Assets and granted the related Divestiture Product License to Amneal prior to the Order Date, and if, at the time the Commission determines to make this Order final and effective, the Commission notifies Respondent Actavis that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondent Actavis, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Divestiture Product Assets or grant of the related Divestiture Product License, as applicable, to Amneal (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

- B. Prior to the Closing Date, Respondent Actavis shall secure all consents and waivers from all Third Parties that are necessary to permit Respondent Actavis to divest the assets required to be divested pursuant to this Order to an Acquirer, and to permit the relevant Acquirer to continue the Business of the Divestiture Product(s) being acquired by that Acquirer;

*provided, however,* Respondent Actavis may satisfy this requirement by certifying that the relevant Acquirer for the Divestiture Product has executed all such agreements directly with each of the relevant Third Parties.

- C. Respondent Actavis shall:

1. submit to each Acquirer, at Respondent Actavis's expense, all Confidential Business Information related to the Divestiture Products being acquired by that Acquirer;
2. deliver all Confidential Business Information related to the Divestiture Product(s) being acquired by that Acquirer to that Acquirer:
  - a. in good faith;
  - b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

- c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;
  3. pending complete delivery of all such Confidential Business Information to the relevant Acquirer, provide that Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Divestiture Product(s) being acquired by that Acquirer that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;
  4. not use, directly or indirectly, any such Confidential Business Information related to the Business of the Divestiture Products other than as necessary to comply with the following:
    - a. the requirements of this Order;
    - b. Respondent Actavis's obligations to each respective Acquirer under the terms of any related Remedial Agreement; or
    - c. applicable Law;
  5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person *except* (i) the Acquirer of the particular Divestiture Products, (ii) other Persons specifically authorized by that Acquirer to receive such information, (iii) the Commission or (iv) the Interim Monitor (if any has been appointed);
  6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information related to the marketing or sales of the Divestiture Products to Respondents' employees responsible for making pricing decisions related to those Retained Products that are the therapeutic equivalent (as that term is defined by the FDA) as the Divestiture Products; and
  7. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information that was in the ownership or possession of Respondent Actavis prior to the Acquisition that is related to any patent infringement suit filed by Respondent Warner Chilcott against Respondent Actavis (and other prospective ANDA holder(s)) related to the Risedronate Products or the Estradiol Group Two Products to any of the Respondents' employees who: (i) was an employee of Respondent Warner Chilcott prior to the Acquisition; or (ii) is involved in the prosecution of any such law suit on behalf Respondents against any other prospective ANDA holder(s).
- D. For each Acquirer of a Divestiture Product, Respondent Actavis shall provide, or cause to be provided to that Acquirer in a manner consistent with the Technology Transfer Standards the following:

1. all Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Product(s) being acquired by that Acquirer; and
2. all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed to Respondent Actavis related to the Divestiture Products being acquired by that Acquirer.

Respondent Actavis shall obtain any consents from Third Parties required to comply with this provision. No Respondent shall enforce any agreement against a Third Party or an Acquirer to the extent that such agreement may limit or otherwise impair the ability of that Acquirer to use or to acquire from the Third Party the Product Manufacturing Technology (including all related intellectual property) related to the Divestiture Products acquired by that Acquirer. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology. Not later than ten (10) days after the Closing Date, Respondents shall grant a release to each Third Party that is subject to such agreements that allows the Third Party to provide the relevant Product Manufacturing Technology to that Acquirer. Within five (5) days of the execution of each such release, Respondents shall provide a copy of the release to that Acquirer.

- E. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent Actavis shall:
1. upon reasonable written notice and request from that Acquirer to Respondent Actavis, Contract Manufacture and deliver, or cause to be manufactured and delivered, to the requesting Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products related to the Divestiture Products acquired by that Acquirer at Supply Cost, for a period of time sufficient to allow that Acquirer (or the Manufacturing Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished drug product independently of Respondents, and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, materials, and necessary components listed in Application(s) of the Respondents for the Divestiture Product(s) acquired by that Acquirer from Persons other than Respondents;
  2. make representations and warranties to such Acquirer that the Contract Manufacture Product(s) supplied to the Acquirer pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Contract Manufacture Product(s) to be marketed or sold in the Geographic Territory, the supplying Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Contract Manufacture Product(s)

supplied to the Acquirer pursuant to a Remedial Agreement by that Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving that Respondent prompt written notice of such claim and cooperating fully in the defense of such claim;

*provided, however,* that the supplying Respondent may reserve the right to control the defense of any such claim, including the right to settle the claim, so long as such settlement is consistent with that Respondent's responsibilities to supply the Contract Manufacture Products in the manner required by this Order;

*provided further, however,* that this obligation shall not require the supplying 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 that Respondent to the Acquirer;

*provided further, however,* that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order, and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability resulting from the failure of the Contract Manufacture Products supplied to the Acquirer pursuant to such Remedial Agreement to meet cGMP;

3. give priority to supplying a Contract Manufacture Product to an Acquirer over manufacturing and supplying of Products for the supplying Respondent's own use or sale;
4. make representations and warranties to such Acquirer the supplying Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure of the Contract Manufacture Products to be delivered in a timely manner as required by the Remedial Agreement(s) unless the supplying Respondent can demonstrate that the failure was beyond the control of the supplying Respondent and in not the result of negligence or willful misconduct by that Respondent;

*provided, however,* that in each instance where: (i) an agreement to divest relevant assets or Contract Manufacture is specifically referenced and attached to this Order and (ii) such agreement becomes a Remedial Agreement for a Divestiture Product, each such agreement may contain limits on a Respondent's aggregate liability for such a failure;

5. during the term of any agreement to Contract Manufacture, upon written request of the Acquirer that is a party to that agreement or the Interim Monitor (if any has been appointed), make available to that Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the relevant Contract Manufacture Products that are generated or created after the Closing Date;

6. during the term of any agreement to Contract Manufacture, the supplying Respondent shall take all actions as are reasonably necessary to ensure an uninterrupted supply of the Contract Manufacture Product(s);
7. in the event that the supplying Respondent becomes unable to supply or produce a Contract Manufacture Product from the facility or facilities originally contemplated under a Remedial Agreement with an Acquirer, then Respondents shall provide a therapeutically equivalent (as that term is defined by the FDA) Product from another of Respondents' facility or facilities in those instances where such facilities are being used or have previously been used, and are able to be used, by Respondents to manufacture such Product(s);
8. during the term of any agreement to Contract Manufacture, provide access to all information and facilities, and make such arrangements with Third Parties, as are necessary to allow the Interim Monitor to monitor compliance with the obligations to Contract Manufacture;
9. during the term of any agreement to Contract Manufacture, provide consultation with knowledgeable employees of the Respondents and training, at the written request of the Acquirer that is a party to that agreement and at a facility chosen by that Acquirer, for the purposes of enabling that Acquirer (or the Manufacturing Designee of that Acquirer) to obtain all Product Approvals to manufacture such Divestiture Products acquired by that Acquirer in the same quality achieved by, or on behalf of, Respondents and in commercial quantities, and in a manner consistent with cGMP, independently of Respondents and sufficient to satisfy management of the Acquirer that its personnel (or the Manufacturing Designee's personnel) are adequately trained in the manufacture of such Divestiture Products;

The foregoing provisions, II.E.1. - 9., shall remain in effect with respect to each Contract Manufacture Product until the earliest of: (i) the date the Acquirer of that Divestiture Product (or the Manufacturing Designee(s) of that Acquirer), respectively, is approved by the FDA to manufacture and sell such Divestiture Product in the United States and able to manufacture such Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents; (ii) the date the Acquirer of that Divestiture Product notifies the Commission and Respondents of its intention to abandon its efforts to manufacture such Divestiture Product; (iii) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer of that Divestiture Product has abandoned its efforts to manufacture that Divestiture Product, or (iv) the date five (5) years from the Closing Date.

- F. From the Order Date, Respondents shall not, directly or indirectly (i) enforce or seek to enforce against the FDA or any other Person, or (ii) seek to have the FDA enforce, any rights that Respondents may have to market on an exclusive basis any Product that is the subject of an ANDA that references or is based on Atelvia (*i.e.*, Application Number N022560) as the Reference Listed Drug as provided in 21 C.F.R. § 314.107 (c); *provided*



*however*, nothing in this Order shall be interpreted to require Respondents to waive or relinquish their rights in the Atlevia® trademark and related copyrights.

- G. Prior to the Closing Date, and at such time(s) as may be provided for under any applicable FDA rules or procedures, Respondents shall:
1. relinquish any and all claims that Respondent Actavis was the first applicant to submit an ANDA that references or is based on Atlevia (*i.e.*, Application Number N022560) pursuant to 21 C.F.R. § 314.107;
  2. relinquish any and all claims to any rights pursuant to ANDA No. 203090 that Respondents or any subsequent holder of this ANDA may have to market on an exclusive basis any Product that references or is based on Atlevia (*i.e.*, Application Number N022560) as the Reference Listed Drug under this ANDA;
  3. provide written notification to the FDA and the Commission that Respondents relinquish any and all such exclusive marketing rights that may exist pursuant to ANDA No. 203090; and
  4. ensure that such notification(s) are made in a timely manner and in a manner consistent with all applicable FDA rules and procedures and sufficient to accomplish the requirements of this Paragraph of the Order.
- H. From the Order Date, Respondents shall not, directly or indirectly (i) enforce or seek to enforce against the FDA or any other Person, or (ii) seek to have the FDA enforce, any rights that Respondents may have to market on an exclusive basis any Product that is the subject of an ANDA that references or is based on Lo Loestrin FE (*i.e.*, Application Number N022501) as the Reference Listed Drug as provided in 21 C.F.R. § 314.107 (c); *provided however*, nothing in this Order shall be interpreted to require Respondents to waive or relinquish their rights in the Lo Loestrin® trademark and copyrights.
- I. Prior to the Closing Date, and at such time(s) as may be provided for under any applicable FDA rules or procedures, Respondents shall:
1. relinquish any and all claims that Respondent Actavis was the first applicant to submit an ANDA that references or is based on Lo Loestrin FE (*i.e.*, Application Number N022501) pursuant to 21 C.F.R. § 314.107;
  2. relinquish any and all claims to any rights pursuant to ANDA No. 202982 that Respondents or any subsequent holder of this ANDA may have to market on an exclusive basis any Product that references or is based on Lo Loestrin FE (*i.e.*, Application Number N022501) as the Reference Listed Drug under this ANDA;
  3. provide written notification to the FDA and the Commission that Respondents relinquish any and all such exclusive marketing rights that may exist pursuant to ANDA No. 202982; and
  4. ensure that such notification(s) are made in a timely manner and in a manner consistent with all applicable FDA rules and procedures and sufficient to accomplish the requirements of this Paragraph of the Order.

- J. Respondents shall require, as a condition of continued employment post-divestiture of the assets required to be divested pursuant to this Order, that each employee that has had access to Confidential Business Information within the one (1) year period prior to the Closing Date sign a confidentiality agreement pursuant to which that employee shall be required to maintain all Confidential Business Information related to the Divestiture Products as strictly confidential, including the nondisclosure of that information to all other employees, executives or other personnel of Respondents (other than as necessary to comply with the requirements of this Order).
- K. Not later than thirty (30) days after the Closing Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information related to the Divestiture Products by Respondents' personnel to all of its employees who:
1. are covered by Paragraph II.C.6;
  2. were directly involved in the research and Development of any of the Divestiture Products; and/or
  3. are or were directly involved any patent infringement suit filed by Respondent Warner Chilcott against Respondent Actavis (and other prospective ANDA holder(s)) related to the Risedronate Products or the Estradiol Group Two Products;
- Respondents shall give the above-described notification by e-mail with return receipt requested or similar transmission, and keep a file of those receipts for one (1) year after the Closing Date. Respondents shall provide a copy of the notification to the relevant Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' registered office within the United States and shall provide an officer's certification to the Commission stating that the acknowledgment program has been implemented and is being complied with. Respondents shall provide the relevant Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.
- L. For each Acquirer of a Divestiture Product that is a Contract Manufacture Product, Respondent Actavis shall:
1. for a period of six (6) months from the Closing Date or until the hiring of twenty (20) Divestiture Product Core Employees by that Acquirer or its Manufacturing Designee, whichever occurs earlier, provide that Acquirer with the opportunity to enter into employment contracts with the Divestiture Product Core Employees related to the Divestiture Products and assets acquired by that Acquirer. Each of these periods is hereinafter referred to as the "Divestiture Product Core Employee Access Period(s)";
  2. not later than the earlier of the following dates: (i) ten (10) days after notice by staff of the Commission to Respondents to provide the Product Employee Information; or (ii) ten (10) days after written request by that Acquirer, provide that Acquirer or Proposed Acquirer(s) with the Product Employee Information related to the

Divestiture Product Core Employees. Failure by Respondents to provide the Product Employee Information for any Divestiture Product Core Employee within the time provided herein shall extend the Divestiture Product Core Employee Access Period(s) with respect to that employee in an amount equal to the delay;

3. during the Divestiture Product Core Employee Access Period(s), not interfere with the hiring or employing by that Acquirer or its Manufacturing Designee of the Divestiture Product Core Employees, and remove any impediments within the control of any Respondent that may deter these employees from accepting employment with that Acquirer or its Manufacturing Designee, including, but not limited to, any noncompete or nondisclosure provision of employment with respect to a Divestiture Product or other contracts with any Respondent that would affect the ability or incentive of those individuals to be employed by that Acquirer or its Manufacturing Designee. In addition, Respondents shall not make any counteroffer to such a Divestiture Product Core Employee who has received a written offer of employment from that Acquirer or its Manufacturing Designee;

*provided, however,* that, subject to the conditions of continued employment prescribed in this Order, this Paragraph shall not prohibit Respondents from continuing to employ any Divestiture Product Core Employee under the terms of that employee's employment with Respondents prior to the date of the written offer of employment from the Acquirer or its Manufacturing Designee to that employee;

4. until the Closing Date, provide all Divestiture Product Core Employees with reasonable financial incentives to continue in their positions and to research, Develop, and manufacture the Divestiture Product consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Product and to ensure successful execution of the pre-Acquisition plans for that Divestiture Product. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondent Actavis until the Closing Date(s) for the divestiture of the assets related to the Divestiture Product has occurred, including regularly scheduled raises, bonuses, and vesting of pension benefits (as permitted by Law);

*provided, however,* that this Paragraph does not require nor shall be construed to require a Respondent to terminate the employment of any employee or to prevent a Respondent from continuing to employ the Divestiture Product Core Employees in connection with the Acquisition; and

5. for a period of one (1) year from the Closing Date, not, directly or indirectly, solicit or otherwise attempt to induce any employee of the Acquirer or its Manufacturing Designee with any amount of responsibility related to a Divestiture Product ("Divestiture Product Employee") to terminate his or her employment relationship with the Acquirer or its Manufacturing Designee; or hire any Divestiture Product Employee;

*provided, however,* Respondents may hire any former Divestiture Product Employee whose employment has been terminated by the Acquirer or its Manufacturing Designee or who independently applies for employment with Respondents, as long as that employee was not solicited in violation of the nonsolicitation requirements contained herein;

*provided further, however,* the Respondents may do the following: (i) advertise for employees in newspapers, trade publications or other media not targeted specifically at the Divestiture Product Employees; or (ii) hire a Divestiture Product Employee who contacts a Respondent on his or her own initiative without any direct or indirect solicitation or encouragement from any Respondent.

- M. Until Respondent Actavis completes the divestitures required by this Order and fully provide, or causes to be provided, the Product Manufacturing Technology related to a particular Divestiture Product to the relevant Acquirer,
1. Respondent Actavis shall take actions as are necessary to:
    - a. maintain the full economic viability and marketability of the Businesses associated with that Divestiture Product;
    - b. minimize any risk of loss of competitive potential for that Business;
    - c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to that Divestiture Product;
    - d. ensure the assets related to each Divestiture Product are provided to the relevant Acquirer in a manner without disruption, delay, or impairment of the regulatory approval processes related to the Business associated with each Divestiture Product;
    - e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and
  2. Respondent Actavis shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Businesses associated with that Divestiture Product.
- N. Respondents shall not join, file, prosecute or maintain any suit, in law or equity, against an Acquirer or the Divestiture Product Releasee(s) of that Acquirer under the following:
1. any Patent owned by or licensed to the Respondents as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;
  2. any Patent that was filed or in existence prior to the Acquisition Date that is acquired by or licensed to the Respondents at any time after the Acquisition Date

that claims a method of making, using, or administering, or a composition of matter of a Product, or that claims a device relating to the use thereof;

if such suit would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing or sale in the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, sale or offer for sale within the United States of America of the Divestiture Product(s) acquired by that Acquirer. Respondents shall also covenant to that Acquirer that as a condition of any assignment or license to a Third Party of the above-described Patents by the Respondents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue that Acquirer or the related Divestiture Product Releasee(s) under such Patents, if the suit would have the potential to interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of the marketing, sale or offer for sale of such Divestiture Product(s) in the United States of America; or (ii) the use within, import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer. The provisions of this Paragraph do not apply to: (i) any Patent owned by, acquired by, or licensed to or from the Respondents that claims inventions conceived by and reduced to practice after the Acquisition Date, or (ii) any dosage forms, strengths or indications not described in the ANDAs related to the Divestiture Product as of the Closing Date;

*provided however*, that, for the purposes of this Paragraph II.N. only, and only with respect to any suit filed by Respondent Warner Chilcott prior to May 19, 2013 involving the Risedronate Products, the term "Patent" shall exclude the Atelvia Patents;

*provided further, however*, that, for the purposes of this Paragraph II.M. only, and only with respect to any suit filed by Respondent Warner Chilcott prior to May 19, 2013 involving the Estadiol Group Two Products, the term "Patent" shall exclude the Lo Loestrin Patents.

- O. Upon reasonable written notice and request from an Acquirer to Respondent Actavis, Respondent Actavis shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent Actavis to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation brought by a Third Party related to the Product Intellectual Property related to any of the Divestiture Product(s) acquired by that Acquirer, if such litigation would have the potential directly to limit or interfere with that Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within,

import into, export from, or the supply, distribution, or sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer.

P. For any patent infringement suit related to a Divestiture Product filed prior to the Closing Date in which Respondent Actavis is alleged to have infringed a Patent of a Third Party or for any potential patent infringement suit from a Third Party that Respondent Actavis has prepared or is preparing as of the Closing Date to defend against, and where such a suit would have the potential directly to limit or interfere with the an Acquirer's freedom to practice the following: (i) the research, Development, or manufacture anywhere in the World of the Divestiture Product(s) acquired by that Acquirer for the purposes of marketing, sale or offer for sale within the United States of America of such Divestiture Product(s); or (ii) the use within, import into, export from, or the supply, distribution, sale or offer for sale within, the United States of America of the Divestiture Product(s) acquired by that Acquirer, Respondent Actavis shall:

1. cooperate with that Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent Actavis in connection with obtaining resolution of any pending patent litigation related to that Divestiture Product;
2. waive conflicts of interest, if any, to allow the Respondent Actavis's outside legal counsel to represent that Acquirer in any ongoing patent litigation related to that Divestiture Product; and
3. permit the transfer to that Acquirer of all of the litigation files and any related attorney work-product in the possession of the Respondent Actavis's outside counsel related to that Divestiture Product.

Q. The purpose of the divestiture of the Divestiture Product Assets and the provision of the related Product Manufacturing Technology and the related obligations imposed on the Respondents by this Order is:

1. to ensure the continued use of such assets for the purposes of the Business associated with each Divestiture Product within the Geographic Territory; and
2. to create a viable and effective competitor, that is independent of Respondents in the Business of each Divestiture Product within the Geographic Territory; and,
3. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

### III.

**IT IS FURTHER ORDERED** that:

- A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor (“Interim Monitor”) to assure that the Respondents expeditiously comply with all of their obligations and performs all of their responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.
- B. The Commission shall select the Interim Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent Actavis of the identity of any proposed Interim Monitor, Respondents shall be deemed to have consented to the selection of the proposed Interim Monitor.
- C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondents’ compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.
- D. If an Interim Monitor is appointed, Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:
  - 1. The Interim Monitor shall have the power and authority to monitor Respondents compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.
  - 2. The Interim Monitor shall act in a fiduciary capacity for the benefit of the Commission.
  - 3. The Interim Monitor shall serve until the date of completion by the Respondent Actavis of the divestiture of all Divestiture Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of this Order and, with respect to each Divestiture Product that is a Contract Manufacture Product, until the earliest of:

- a. the date the Acquirer of that Divestiture Product (or that Acquirer's Manufacturing Designee(s)) is approved by the FDA to manufacture and sell that Divestiture Product and able to manufacture the Divestiture Product in commercial quantities, in a manner consistent with cGMP, independently of Respondents;
- b. the date the Acquirer of that Divestiture Product notifies the Commission and Respondents of its intention to abandon its efforts to manufacture that Divestiture Product; or
- c. the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture that Divestiture Product;

*provided, however,* that, the Interim Monitor's service shall not exceed five (5) years from the Order Date;

*provided, further,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

- E. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets. Respondents shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondents' compliance with the Order.
- F. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent Actavis, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent Actavis, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim Monitor's duties, including all reasonable fees of counsel and other reasonable 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 losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Interim Monitor.



- H. Respondents shall report to the Interim Monitor in accordance with the requirements of this Order and as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondents of its obligations under the Order.
- I. Respondents may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Interim Monitor's duties.
- K. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.
- L. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.
- M. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

#### IV.

##### **IT IS FURTHER ORDERED** that:

- A. If Respondent Actavis has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Divestiture Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets in a manner that satisfies the requirements of this Order. 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture 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 Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent Actavis, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Actavis of the identity of any proposed Divestiture Trustee, Respondent Actavis shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent Actavis shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.
- D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent Actavis shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.
  2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.
  3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents 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 Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent Actavis's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent Actavis from among those approved by the Commission; *provided further, however,* the Respondent Actavis shall select such Person within five (5) days after receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent Actavis, 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 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 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 of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondent Actavis, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.
6. Respondent Actavis 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 gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of this Order or the Order to Maintain Assets in this matter.
8. The Divestiture Trustee shall report in writing to Respondent Actavis and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent Actavis may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- E. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.
- G. Respondent Actavis may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- H. The Commission or, in the case of a court-appointed Divestiture 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 accomplish the divestiture required by this Order.

V.

**IT IS FURTHER ORDERED** that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, the Respondents shall assure that their own counsel (including its own in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to an Acquirer or access original documents provided to an Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and for the following purposes:

- A. To assure the Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or
- B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Divestiture Products or the assets and Businesses associated with those Divestiture Products;

*provided, however,* that the Respondents may disclose such information as necessary for the purposes set forth in this Paragraph pursuant to an appropriate confidentiality order, agreement or arrangement;

*provided further, however,* that pursuant to this Paragraph V, the Respondent(s) needing such access to original documents shall: (i) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the relevant Acquirer (but shall not be deemed to have violated this requirement if that Acquirer withholds such agreement unreasonably); and (ii) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

## VI.

### **IT IS FURTHER ORDERED** that:

- A. Any Remedial Agreement shall be deemed incorporated into this Order.
- B. Any failure by the Respondents to comply with any term of such Remedial Agreement shall constitute a failure to comply with this Order.
- C. Each Remedial Agreement related to each of the Divestiture Products shall include a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of the Respondents' obligation to the Acquirer pursuant to this Order.
- D. For each Divestiture Product that is a Contract Manufacture Product, Respondent Actavis shall include in the Remedial Agreement(s) related to that Divestiture Product a representation from the Acquirer that the Acquirer shall use commercially reasonable efforts to secure the FDA approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, each such Divestiture Product, as applicable, and to have any such manufacture to be independent of the Respondents, all as soon as reasonably practicable.
- E. No Respondent shall seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Divestiture Products a decision the result of which would be inconsistent with the terms of this Order or the remedial purposes thereof.
- F. No Respondent shall modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

## VII.

### **IT IS FURTHER ORDERED** that:

- A. Within five (5) days of the Acquisition, Respondent Actavis shall submit to the Commission a letter certifying the date on which the Acquisition occurred.
- B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondents have fully complied with Paragraphs II.A , II.B., II.C.1.-3., II.D., II.E., II.G., II.I. and II.M., Respondents 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. Respondents shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondents shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the relevant assets and/or the agreement to supply relevant Products and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- C. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, and at other times as the Commission may require, Respondents 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 the Order.

## VIII.

**IT IS FURTHER ORDERED** the Respondents shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of a Respondent;
- B. any proposed acquisition, merger or consolidation of a Respondent; or
- C. any other change in a Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

IX.

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to any Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, that Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. access, during business office hours of that Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of that Respondent related to compliance with this Order, which copying services shall be provided by that Respondent at the request of the authorized representative(s) of the Commission and at the expense of that Respondent; and
- B. to interview officers, directors, or employees of that Respondent, who may have counsel present, regarding such matters.

X.

**IT IS FURTHER ORDERED** that this Order shall terminate ten (10) years from the Order Date.

By the Commission.

Donald S. Clark  
Secretary

SEAL  
ISSUED:

**NON-PUBLIC APPENDIX I  
DIVESTITURE AGREEMENTS**

**[Redacted From the Public Record Version, But Incorporated By Reference]**