

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues this Order to Maintain Assets:

1. Respondent Baxter is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Baxter Parkway, Deerfield, Illinois 60015.

2. Respondent Wyeth is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Five Giralda Farms, Madison, New Jersey 07940.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order to Maintain Assets, the definitions used in the Consent Agreement and the attached Decision and Order shall apply.

II.

IT IS FURTHER ORDERED that from the date this Order to Maintain Assets becomes final:

A. With respect to the PV&M Assets Respondent Baxter shall:

1. Take such actions as are reasonably necessary to maintain the viability, marketability, and competitiveness of the PV&M Assets and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the PV&M Assets, except for ordinary wear and tear and

as would otherwise occur in the ordinary course of business.

2. Preserve the PV&M Assets intact and not take any affirmative action, or fail to take any action within its control, as a result of which the viability, marketability, or competitiveness of the PV&M Assets would be diminished.
3. Maintain relations and good will with suppliers, distributors, customers, employees, Agencies, and others having relationships with the business relating to the PV&M Assets.

B. With respect to the Propofol Assets:

1. Respondents shall take such actions as are reasonably necessary to maintain the viability, marketability, and competitiveness of the Propofol Assets and to prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer or impairment of any of the Propofol Assets, except for ordinary wear and tear and as would otherwise occur in the ordinary course of business.
2. Respondents shall preserve the Propofol Assets intact and not take any affirmative action, or fail to take any action within their control, as a result of which the viability, marketability, or competitiveness of the Propofol Assets would be diminished.
3. Respondents shall maintain relations and good will with suppliers, distributors, customers, employees, Agencies, and others having relationships with the business relating to the Propofol Assets.
4. Respondents shall provide all Propofol Employees with reasonable financial incentives to continue in their positions until the Divestiture Date, including, but not limited to, a continuation of all employee benefits offered by Respondents until the Divestiture Date, including regularly scheduled raises and bonuses, and a vesting of all pension benefits (as permitted by law).
5. Respondent Wyeth shall: (i) keep Faulding (or the Propofol Acquirer) timely and reasonably informed on an on-going basis as to the defense of the Propofol Patent Litigation; (ii) promptly provide Faulding (or the Propofol Acquirer) and its counsel copies of all court filings relating to the Propofol Patent Litigation; (iii) defend the Propofol Patent Litigation in a commercially reasonable manner until the Divestiture Date; (iv) not take any action or position in defending the

Propofol Patent Litigation that would be prejudicial in any material respect to Faulding's (or the Proposed Acquirer's) ability to successfully defend the Propofol Patent Litigation after the Divestiture Date; (v) upon request of Faulding (or the Proposed Acquirer), discuss with Faulding (or the Proposed Acquirer) and its counsel proposed litigation strategy, proposed action, responses or replies; (vi) not settle or otherwise dispose of the Propofol Patent Litigation in a manner that would have a material adverse effect on Wyeth's Propofol Assets after the Acquisition Date without the prior written consent of Faulding (or the Propofol Acquirer), which consent shall not be unreasonably withheld or delayed; (vii) pay any and all costs, damages, and expenses relating to the Propofol Patent Litigation prior to the Divestiture Date; and (viii) prior to the Divestiture Date, take reasonably appropriate and necessary action to assist in the transition to Faulding (or the Propofol Acquirer) and its counsel of the defense of the Propofol Patent Litigation.

III.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondents such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order to Maintain Assets.

IV.

IT IS FURTHER ORDERED that for the purposes of determining or securing compliance with this Order to Maintain Assets, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents made to their principal United States office, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours of Respondents 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 Respondents relating to compliance with this Order to Maintain Assets; and

B. Upon five (5) days' notice to Respondents and without restraint or interference from Respondents, to interview officers, directors, or employees of Respondents, who may have counsel

present, regarding such matters.

V.

IT IS FURTHER ORDERED that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after all of the divestitures or transfers of the Assets, as described in and required by the Decision and Order, are completed.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: December 20, 2002