

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of)	
)	
Alan B. Miller,)	
a natural person;)	
)	
Universal Health Services, Inc.,)	
a corporation;)	
)	
and)	Docket No. C-4309
)	
Psychiatric Solutions, Inc.,)	
a corporation.)	
)	
)	

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed acquisition of Psychiatric Solutions, Inc. (“PSI”), by Universal Health Services, Inc. (“UHS”), an entity controlled by Alan B. Miller, hereinafter referred to as Respondents, and 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 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 containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets (“Hold Separate Order”):

1. Respondent Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 51448, King of Prussia, PA 19406-0958.
2. Respondent Universal Health Services, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, PA 19406-0958.
3. Respondent Psychiatric Solutions, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its corporate head offices and principal place of business located at 6640 Carothers Parkway, Suite 500, Franklin, TN 37067.
4. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

- A. “Acquisition Date” means the date on which Respondent Universal Health Services, Inc., directly or indirectly, acquires a controlling interest in Respondent Psychiatric Solutions, Inc.
- B. “Decision and Order” means
 1. the Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and

2. the Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.
- C. “Hold Separate Business” means the Delaware Divestiture Assets, the Las Vegas Divestiture Assets, and the Puerto Rico Divestiture Assets.
 - D. “Hold Separate Employees” means all full-time employees, part-time, employees, contract employees, and independent contractors, whose duties, at any time during the ninety (90) days preceding the Acquisition or any time after the Acquisition related or relates primarily to at least one of the Divestiture Businesses, a complete list of whom has been submitted to and approved by the Hold Separate Trustee and each respective Manager, in consultation with the Commission staff, no later than three (3) days after the Acquisition.
 - E. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
 - F. “Hold Separate Period” means the period during which the Hold Separate Order is in effect, which shall begin on the Acquisition Date and terminate pursuant to Paragraph VIII. of this Hold Separate Order.
 - G. “Hold Separate Trustee” means the Person appointed pursuant to Paragraph II. of this Hold Separate Order.
 - H. “Manager” means the Person or Persons appointed pursuant to Paragraph II. of this Hold Separate Order.
 - I. “Orders” means the Decision and Order and this Hold Separate Order.
 - J. “Person” means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity or governmental body.
 - K. “Support Service Employees” means the persons listed on Confidential Appendix A of the Hold Separate Order; at any time during the Hold Separate Period, Respondents may, in consultation with the Hold Separate Trustee, modify the list of Support Service Employees on Confidential Appendix A.
 - L. “Support Services” means assistance with respect to the operation of the Hold Separate Business, including, but not limited to, (i) human resources and administrative services such as payroll processing and employee benefits; (ii) financial accounting services; (iii) reimbursement department support (i.e., Medicare cost reports); (iv) tax-related support; (v) treasury support; (vi) insurance support; (vii) clinical information systems support; (viii) information technology software and support services; (ix) participation in group purchasing arrangements; (x) online training programs; (xi) legal services; and (xii) federal and state regulatory compliance support.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

A. Respondents shall:

1. Hold the Hold Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business; and
2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Managers, or the Hold Separate Trustee, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to ensure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws.

B. Respondents shall take all actions necessary to maintain and ensure the continued maintenance of the viability, marketability and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber or otherwise impair the Hold Separate Business (except as required by the Decision and Order).

C. Respondents shall hold the Hold Separate Business separate, apart, and independent of its other operations on the following terms and conditions:

1. At any time after Respondents sign the Consent Agreement, the Commission may appoint Robert H. Osburn as Hold Separate Trustee to monitor the operations of the Hold Separate Business and ensure that Respondents comply with their obligations as required by this Hold Separate Order and the Decision and Order:
 - a. The Commission shall select the Hold Separate Trustee, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice by the staff of the Commission to Respondents of the identity of any proposed Hold Separate Trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

- b. The Hold Separate Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager or Managers; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to the Hold Separate Order, including, without limitation, maintaining the viability, marketability and competitiveness of the Hold Separate Business pending divestiture.
- c. No later than three (3) days after appointment of the Hold Separate Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to and confers upon the Hold Separate Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Orders, and shall require that the Hold Separate Trustee shall act in a fiduciary capacity for the benefit of the Commission.
- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee.
- e. Respondents shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondents' compliance with this Hold Separate Order, the Consent Agreement or the Decision and Order or otherwise to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order.
- f. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.

- g. The Commission may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Trustee's duties.
- h. Respondents may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, that such agreement shall not restrict the Hold Separate Trustee from providing any information to the Commission.
- i. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.
- j. Respondents shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Hold Separate Trustee.
- k. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the Hold Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

1. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this Hold Separate Order.
 - m. The Hold Separate Trustee shall serve until the day after the last of the Closing Dates; *provided, however*, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.
2. No later than five (5) days after the Acquisition Date, Respondents shall appoint a Manager or Managers, approved by the Hold Separate Trustee in consultation with Commission staff, from among the current employees of the Hold Separate Business to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice:
 - a. Each Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Hold Separate Business independently of the management of Respondents and their other businesses. No Manager shall be involved, in any way, in the operations of the other businesses of Respondents during the term of this Hold Separate Order.
 - b. Each Manager shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Manager's duties and responsibilities. Nothing contained herein shall preclude any of the Managers from contacting or communicating directly with the staff of the Commission either at the request of the staff of the Commission or in the discretion of the Manager.
 - c. No later than three (3) days after appointment of a Manager, Respondents shall enter into a management agreement with that Manager that, subject to the prior approval of the Hold Separate Trustee, in consultation with the Commission staff, transfers all rights, powers, and authority necessary to permit that Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Orders.

- d. No Manager shall make material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. Each Manager shall have the authority, in consultation with the Hold Separate Trustee, to remove Hold Separate Employees and replace them with others of similar experience or skills. If any Hold Separate Employee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondents to, and Respondents shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
- f. In addition to Hold Separate Employees, each Manager may, in consultation with the Hold Separate Trustee, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.
- g. Respondent shall provide each Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business's viability, marketability and competitiveness until the Closing Date, and as may otherwise be necessary to achieve the purposes of these Orders.
- h. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove a Manager for cause. Within three (3) days of such removal, Respondents shall appoint a replacement Manager on the same terms and conditions as provided in this Hold Separate Order. In the event that a Manager voluntarily ceases to act as a Manager, then Respondents shall appoint a substitute Manager within three (3) days on the same terms and conditions as provided in this Hold Separate Order.
- i. Each Manager shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.

- j. Respondents shall indemnify each Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Manager.
3. The Hold Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Closing Date of the respective Divestiture Assets, the Manager, in consultation with the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Trustee:
 - a. to operate the Hold Separate Business at least as it is currently operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition Date;
 - b. to perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
 - c. to carry on during the Hold Separate Period such capital projects and physical plant improvements as are already under way for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, and expansion projects; and
 - d. to maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses,

capital losses, or other losses; *provided, however*, that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Trustee, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

5. In connection with Support Services not included within the Hold Separate Business:
 - a. Respondents shall continue to provide, or offer to provide, the same Support Services to the Hold Separate Business as are being provided to the Hold Separate Business by Respondents as of the date the Consent Agreement is signed by Respondents;
 - b. For Support Services that Respondents provided to the Hold Separate Business as of the date the Consent Agreement is signed by Respondents, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services as of the date the Consent Agreement is signed by Respondents;
 - c. For any other Support Services that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services;
 - d. Support Service Employees must retain and maintain all Confidential Business Information of the Hold Separate Business on a confidential basis, and, except as is permitted by the Orders, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves the management or operation of any of Respondents' businesses or activities other than the Hold Separate Business. As required by II.C.6., below, Support Service Employees shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business, except as permitted by the Orders; and
 - e. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Manager and in consultation with the Hold Separate Trustee, the ability to acquire Support Services from Third Parties.

6. Respondents shall cause the Hold Separate Trustee, each Manager, and each of Respondents' employees (excluding those employed in the Hold Separate Business) having access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order or the Decision and Order, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves the management or operations of any of Respondents' businesses or activities other than the Hold Separate Business.
7. Except for the Managers and Hold Separate Employees, and except to the extent provided in this Hold Separate Order, Respondents shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.
8. Respondents' employees (excluding the Hold Separate Employees and Support Service Employees) shall not receive, or have access to, or use or continue to use any Confidential Business Information except:
 - a. as required by law; and
 - b. to the extent that necessary information is exchanged:
 - (1) in the course of consummating the Acquisition;
 - (2) in negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence;
 - (3) in complying with or as permitted by this Hold Separate Order or the Decision and Order;
 - (4) in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
 - (5) in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hold Separate Business; or
 - (6) in obtaining legal advice.

Nor shall any Manager or any Hold Separate Employees receive or have access to, or use or continue to use, any confidential business information relating to Respondents' businesses (not subject to the

Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

9. Respondents and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.
 10. No later than ten (10) days after the Acquisition Date, Respondents shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
 11. No later than ten (10) days after the Acquisition Date, Respondents shall circulate to Hold Separate Employees, and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business, a notice of this Hold Separate Order and the Consent Agreement, in a form approved by the Hold Separate Trustee in consultation with Commission staff.
- D. Respondents shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Divestiture Assets until the applicable Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold

Separate Order.

- E. The purpose of this Hold Separate Order is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order and the Decision and Order; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

III.

IT IS FURTHER ORDERED that:

- A. Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information, and shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish such Confidential Business Information, directly or indirectly, to or with any Person other than:
1. as necessary to comply with the requirements of these Orders;
 2. subject to an appropriate confidentiality agreement, a Person that has shown an interest in acquiring one or more of the Divestiture Businesses and that UHS has reason to believe may be qualified to acquire one or more of the Divestiture Businesses;
 3. a Prospective Acquirer or Commission-approved Acquirer, or other Persons specifically authorized by such Prospective Acquirer or Commission-approved Acquirer to receive such information, regarding a particular Divestiture Business;
 4. pursuant to a Divestiture Agreement;
 5. to enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 6. to comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the Acquisition, Respondents shall provide written notification of the restrictions, prohibitions and requirements of this Paragraph III. and Paragraph V. of the Decision and Order to all of

Respondents' employees, agents, and representatives located in the Relevant Areas or, even if located outside the Relevant Areas, to Respondents' employees, agents, and representatives who had or have responsibilities in or relating to the Relevant Areas or who had or have access to or possession, custody or control of any Confidential Business Information. Respondents may provide such notification by e-mail with return receipt requested or similar transmission, and must keep a file of any receipts or acknowledgments for one (1) year after the respective Closing Date. Respondents shall provide a copy of such notification to the Commission-approved Acquirer. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and shall provide an officer's certification to the Commission, stating that such acknowledgment program has been implemented and is being complied with. Respondents shall provide the Commission-approved Acquirer with copies of all certifications, notifications and reminders sent to Respondents' personnel.

C. Respondents shall:

1. no later than fourteen (14) days after the Acquisition, obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives located in the Relevant Areas or, even if located outside the Relevant Areas, from each of Respondents' employees, agents, and representatives who had or have responsibilities in or relating to the Relevant Areas or who had or have access to or possession, custody or control of any Confidential Business Information an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of these Orders; and
2. no later than thirty (30) days after the Acquisition, institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph III., including all actions that Respondents would take to protect their own trade secrets and confidential information.

IV.

IT IS FURTHER ORDERED that Respondents shall:

- A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
1. name, job title or position, date of hire and effective service date;
 2. a specific description of the employee's responsibilities;

3. the base salary or current wages;
 4. the most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year and current target or guaranteed bonus, if any;
 5. employment status (i.e., active or on leave or disability; full-time or part-time);
 6. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. at the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees;
- C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer;
- D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
- E. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents;
- F. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant

Employees to terminate his or her employment with the Commission-approved Acquirer; *provided, however*, that Respondents may:

1. advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further, however*, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Commission-approved Acquirer has notified Respondents in writing that the Commission-approved Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Commission-approved Acquirer.

V.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

VI.

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

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

VII.

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

- A. Access, during business office hours of such 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 such Respondent related to compliance with this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and
- B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

VIII.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at 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 the last of the divestitures required by the Decision and Order is completed; *provided, however*, that when the Divestiture Assets that are included within the Hold Separate Business are divested pursuant to the applicable paragraphs in the Decision and Order, those Divestiture Assets shall cease to be covered by this Hold Separate Order.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: November 15, 2010

Confidential Appendix A

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