

IN THE MATTER OF

GODFREY COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5
OF THE FEDERAL TRADE COMMISSION ACT AND SEC. 7 OF THE
CLAYTON ACT

Docket C-3066. Final Order, May 14, 1981—Modifying Order, June 28, 1982

This order reopens the proceeding and modifies the Commission's order issued on May 14, 1981 (97 F.T.C. 456), by modifying Paragraph I(G) of the order to relieve respondent from the obligation of divesting a specified retail grocery store.

ORDER MODIFYING CEASE AND DESIST ORDER ISSUED MAY 14, 1981

The Federal Trade Commission having considered respondent Godfrey Company's petition filed on March 12, 1982, to reopen this matter and to modify the consent order to cease and desist issued by the Commission on May 14, 1981, and having determined that reopening and modification of the order is warranted:

It is ordered, That this matter be, and it hereby is reopened and that Paragraph I(G) of the Commission's order be and it is hereby modified to read as follows:

(G) The "disposition stores" means the following Godfrey ("G") stores and Jewel ("J") stores:

1. G-427 (3045 S. 13th St., Milwaukee, WI.).
2. G-810 (3939 S. 76th St., Milwaukee, WI.).
3. J-1201 (1201 N. 35th St., Milwaukee, WI.).
4. J-729 (729 S. Layton Blvd., Milwaukee, WI.).
5. J-15182 (N81 W. 15182 Appleton Ave., Menomonee Falls, WI.).

Complaint

99 F.T.C.

IN THE MATTER OF
BROWARD COUNTY MEDICAL ASSOCIATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3091. Complaint, June 28, 1982—Decision, June 28, 1982

This consent order requires a Florida medical association to cease, among other things, inhibiting competition among health care providers by restricting its members from soliciting patients; advertising fees and services; and by declaring such activities unethical. The association is required to remove from its code of ethics, constitution and bylaws, any provision which is inconsistent with the prohibitions contained in the order; and publish revised versions of these documents. The order also requires that the association take no formal action against a party charged with violating an ethical standard without first providing that party with reasonable notice of the allegations and a hearing, as well as written findings and conclusions concerning the allegations. Further, for a period of ten years, the association is required to provide each new member with a copy of the order.

Appearances

For the Commission: *Steven T. Kessel and Laurel H. Brandt.*

For the respondent: *Pro se.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended (15 U.S.C. 41, *et seq.*), and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the named respondent has violated the provisions of Section 5 of the Federal Trade Commission Act and that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Broward County Medical Association is a corporation formed pursuant to the laws of the State of Florida, with its mailing address at 2200 South Andrews Ave., Fort Lauderdale, Florida.

PAR. 2. Respondent is a professional association formed to represent the interests of physicians who practice in Broward county, Florida. Respondent has approximately 1500 members, instituting a substantial majority of physicians in Broward County.

PAR. 3. Respondent is a component society of the Florida Medical

Association, which is in turn a constituent society of the American Medical Association.

PAR. 4. Members of respondent are engaged in the business of providing medical health care services for a fee. Except to the extent that competition has been restrained as herein alleged, members of respondent have been and are now in competition among themselves and with other physicians.

PAR. 5. Respondent is organized for the purpose, among others, of guarding and fostering the interests of its members. Respondent engages in activities which further its members' pecuniary interests. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, as amended. 15 U.S.C. 44.

PAR. 6. In the conduct of their business, members of respondent receive and treat patients from other states and counties, receive substantial sums of money from the federal government and from private insurers for rendering medical services, which money flows across state lines, and prescribe medicines which are shipped in interstate commerce. The acts or practices described below are in interstate commerce, or affect the interstate activities of respondent's members, third parties who pay for medical services, other third parties, and some patients of respondent's members, and are in or affect commerce within the meaning of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1).

PAR. 7. Respondent has acted as a combination of at least some of its members or has conspired with at least some of its members to foreclose, frustrate, and eliminate competition among medical doctors in Broward County, Florida by:

A. Prohibiting its members from truthfully advertising their services to the public, from distributing truthful information about their fees and services, and from otherwise soliciting patients' business; and

B. Coercing individual members into abandoning their efforts to truthfully advertise their services, to distribute truthful information about their fees and services, and to otherwise solicit patients' business.

PAR. 8. Respondent has engaged in various acts or practices in furtherance of this combination or conspiracy, including among other things:

A. Adopting and implementing written and unwritten codes of ethics that prohibit efforts by its members to truthfully advertise

their services in the Yellow Pages or in other media, or to otherwise distribute truthful information to the public about their fees and services. (See Exhibits A through C attached hereto). By virtue of such ethical restraints, members are prohibited from advertising, among other things: their fees; whether they accept Medicare assignment of benefits; whether they accept credit cards; their professional training and experience; their business hours and office locations; and their knowledge of languages other than English.

B. Publishing statements by some of its officials advising members that advertising is unethical and threatening disciplinary action and other sanctions against members who advertise. In particular, in 1981, respondent published and distributed statements by some of its officers advising its members that advertisement of their services in the Yellow Pages telephone directory was unethical, and that those members who violated respondent's written and unwritten proscriptions against advertising would be disciplined by respondent (See Exhibits B and C attached hereto);

C. Intimidating those members who seek to truthfully advertise their fees and services or to otherwise solicit patients' business by engaging in a concerted effort to obtain the names of those members and threatening to publish their names in respondent's membership magazine and subject them to the "ridicule of (their) peers" (See Exhibit C);

D. Sending letters to individual members who truthfully advertised their fees and services or who otherwise solicited patients' business that pressured those individual members to abandon such activities; and

E. Summoning individual members to meetings of respondent's Executive Committee and Board of Censors and threatening at those meetings to take disciplinary or other action to compel members to cease truthfully advertising their fees or services or otherwise soliciting patients' business.

PAR. 9. Through the combination or conspiracy and the acts or practices described above members of respondent have agreed not to, and do not, advertise their services or otherwise solicit patients' business, and certain individual members of respondent have been coerced into abandoning advertising their services or otherwise soliciting patients' business. Such advertising and solicitation enables physicians to compete on the basis of price, quality and convenience, and enables individual patients to choose among physicians on the basis of price, quality, or convenience. Consequently:

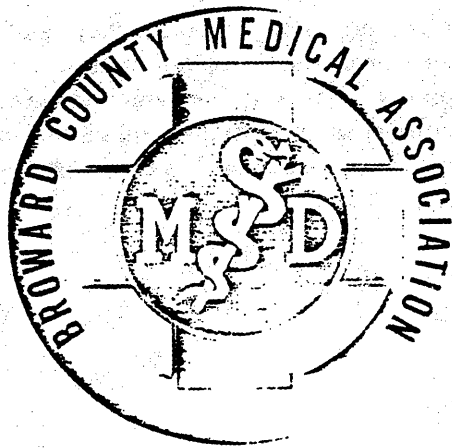
A. Competition among physicians for patients has been foreclosed, frustrated and eliminated; and

B. Consumers, including senior citizens among others, have been deprived of the benefits of competition among physicians. In particular, patients have been deprived of truthful information about physicians' fees and services, including, among other things: physicians' fees; whether physicians accept Medicare assignment of benefits; whether they accept credit cards; professional training or experience; their business hours and office locations; and their knowledge of languages other than English.

PAR. 10. The combination or conspiracy and the acts and practices described above constitute unfair methods of competition or unfair or deceptive acts or practices which violate Section 5 of the Federal Trade Commission Act. Such combination or conspiracy is continuing and will continue absent the entry against respondent of appropriate relief.

EXHIBIT A-1

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Code of Ethics

EXHIBIT A-2

CODE

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PRINCIPLES OF MEDICAL ETHICS
BROWARD COUNTY MEDICAL ASSOCIATION

* * *

The Code is intended to establish certain general principles or rules of action and conduct for members of the Association. These principles are not rules to govern but are precepts to guide to correct conduct. "Custom is stronger than any law."
—Ovid

* *

Chapter I

GENERAL PRINCIPLES

Section 1. CHARACTER OF THE PHYSICIAN. The prime object of the medical profession is to render service to humanity. Reward or financial gain is a subordinate consideration. Whoever chooses this profession assumes the obligation to conduct himself in accord with its ideals. A physician should be "an able and discreet man, learned in the art and science of healing." Millennia ago Hippocrates summed up the character of a physician. "He should also be modest, sober, patient, prompt to do his whole duty without anxiety, pious without superstition, conducting himself with propriety in his profession and in all the actions of his life."

Section 2. THE PHYSICIAN'S RESPONSIBILITY. The profession of medicine having for its end the common good of mankind knows nothing of national enmities, of political strife, of sectarian or racial dissension.

Disease and pain, the sole conditions of its ministry, is disquieted by no misgivings concerning the justice and honesty of its client's cause but dispenses its peculiar benefits without stint or scruple to men of every country and party and rank and religion and to men of no religion at all.

Section 3. GROUPS AND CLINICS. The ethical principles actuating and governing a group or clinic are exactly the same as those applicable to the individual. As a group or clinic is composed of individual physicians, each of them, whether employer, employee or partner, is subject to the principles of ethics herein elaborated. The uniting into a business or professional organization does not relieve them, either individually or as a group, from the obligations they assume when entering the profession. A group of physicians in an association, corporation or otherwise organized together may not label their group or its place of practice as a 'clinic' or 'center' unless it consists of five or more physicians.

Section 4. ADVERTISING. Solicitation of patients directly or indirectly by a physician, by groups of physicians or by institutions or organizations is unethical. Among unethical practices are included the not always obvious devices of furnishing or inspiring newspaper or magazine comments concerning cases in which the physician or group or institution is concerned. All newspaper or magazine articles dealing in any way with medical subjects or the practice of medicine written by members of this association either alone or jointly with a newspaper or other reporter will be approved before publication by: (1) A majority of the members of this association practicing the branch of medicine involved; and also, (2) The Chairman of the Public Relations Committee of this association. The above in no way is to restrict the Chairman of the Public Relations Committee or the Broward County Health Department from

EXHIBIT A-3
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giving medical information of an emergency nature to the press. Self laudations defy the traditions and lower the moral standard of the medical profession. They are an infraction of good taste and are heartily disapproved.

The circulation of simple professional cards is limited to the giving of one card to a patient if requested. Distribution of cards to hotels, apartment houses, restaurants and the like is unethical. A modest simple announcement of the opening of a new office, change of address or association may be inserted in a newspaper not more than three times. The announcement should be limited to name, address, telephone number, office hours and specialty. Office signs should be limited in size to between two and one-half to three and one-half inch high letters and should be attached to the building or erected only a few feet from it. The use of large signs or neon or other lighted signs or the use of arrows or the distant placement of signs is not approved. Listing of a physician's name in a directory other than the telephone directory, professional directories, and non-commercial directories listing all doctors of medicine in the community without charge is not approved. The listing of a specialty for which the physician is not qualified as judged by the membership committee after review of his training and qualifications is fraudulent and unethical. Announcements or special notices may be sent through the mail in case of opening of a new office, removal or change of office, association or dis-association with other physicians, resumption of practice after a military or other leave of absence. These special notices may be mailed to physicians and former patients only. In all signs and directories, it is better not to use Doctor or Dr. The use of M.D. after your name is preferable.

Section 5. EDUCATIONAL INFORMATION, NOT ADVERTISING. Many people literate and well educated do not possess a special knowledge of medicine. Medical books and journals are not easily accessible or readily understandable. The Association considers it ethical for a physician to meet the request of the Associations' Public Relations Committee to write, act or speak for general readers or audiences. The physician should be guided by the decision of the Public Relations Committee in matters of this kind. The most worthy and effective advertisement possible for a physician is the establishment of a well merited reputation for professional ability and fidelity. This cannot be forced but must be the outcome of character and conduct.

Section 6. PATIENTS, COMMISSIONS, REBATES, "KICK-BACKS," AND SECRET REMEDIES. An ethical physician will not receive excessive remuneration from patients on the sale or rental of surgical instruments, appliances and medicines; nor any profit from a copyright on methods or procedures. The acceptance of "kick-backs," rebates on prescriptions or appliances or laboratory work or of commissions from attendants who aid in the care of patients is unethical. The physician should receive his remuneration for professional services rendered only in the amount of his fees specifically announced to his patient at the time the service is rendered or in the form of a subsequent statement and he should not accept additional compensation secretly or openly, directly or indirectly from any other source. It is considered unethical for any physician to charge excessive or exorbitant fees for his services. Furthermore, it shall be considered unethical for any physician to increase his fees by unnecessarily prolonging the care and treatment of any patient. The prescription dispensing or use by a physician of a secret medicine or other remedial agent of which he does not know the composition is unethical.

Section 7. EVASION OF LEGAL RESTRICTIONS. An ethical physician will observe the laws regulating the practicing of medicine and will not assist others to evade such laws. He will observe those laws, not only in the letter but in the spirit of the law.

Chapter II

DUTIES OF PHYSICIANS TO THEIR PATIENTS

Section 1. STANDARDS, USEFULNESS, NONSECTARIANISM. A sectarian or cultist as applied to medicine is one who alleges to follow or in his practice does follow a dogma.

00010 EXHIBIT A-4

TELEPHONE LISTINGS AND PAID NEWSPAPER ANNOUNCEMENTS

1. A physician may list his name, address, and telephone number in the *white pages* of any telephone directory published primarily for the municipality in which he maintains an office or a residence. He may list both residence and office. He must not permit any part of his listing to be printed in bold face type.
2. The physician's degree (M.D.) and the notation P.A. (if applicable) may appear after his given name, but no other designations, degrees are permissible; (exceptions, DMD or DDS, if earned dental degrees).
3. Residences need not be listed in the white pages.
4. A physician may not list in the white pages and professional information other than his office address and telephone number. However, he may list an alternate number in case of no answer.
5. A physician may list his name, address, and telephone number in the *yellow pages* of any telephone directory published primarily for the municipality in which he maintains an office or residence. He may list both residence and office.
6. Physicians names should be listed alphabetically under the heading, "Physicians and Surgeons, M.D." It is permissible in this general alphabetical listing to follow the physician's name with the simple statement, "Practice limited to _____."
7. In addition to the alphabetical listing, a physician may list himself under no more than two specialty or sub-specialty headings, provided he is Board Certified or Qualified in, or limits his practice to, the primary specialty; and provided further that the specialty or sub-specialty is recognized by the American Medical Association and the Advisory Board for Medical Specialties, and that examination for certification is being conducted.
8. Each physician who uses multiple listings must be prepared to justify these listings if called upon to do so. The BCMA office keeps a current listing of recognized specialties, and may be consulted at any time.
9. A statement that the physicians practice is limited may appear under the general listing only. A brief statement of office hours or a note that patients are seen by appointment only is acceptable. Alternate phone or answering service number may be listed.
10. **NOT ACCEPTABLE:**
 - Bold Face Type.
 - Listings boxed by lines or rules.
 - Any statement such as "Diplomate of the American Board of _____," or "Fellow of the American College of _____."
 - Any language, symbol or device that tends to direct attention to one particular listing or that could be construed as advertising. i.e., Techniques, Procedures, or Specific Disease entities.
11. Newspaper Announcements:
 - A member may purchase newspaper space for the following:
 - A. To announce the opening of an office of a physician new in the community.
 - B. To announce the relocation of a professional office to a new address or the establishment of a second office.
 - C. To announce the association of a new physician with an established professional office.

EXHIBIT A-5

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- D. To announce that an office will be closed for an extended period (30 days or more) for reason of illness, vacation or other cause, and to announce the reopening of the office. However, if the office telephone is to be answered by office or answering service, announcements will not be permitted.
12. The number of insertions should not exceed four within a 30 day period. Insertions limited to two column width (5 inches) and three inches in depth. Type size not to exceed 18 point. Black ink, and not surrounded by excessive white space.
13. Use of pictures, drawings, logotypes expressly forbidden.
- The Association will take disciplinary action as may be indicated against violators; except that the Judicial Council of the Florida Medical Association may intervene if the Association fails to take adequate and proper action.*

EXHIBIT B



I was encouraged by the recent publication of the telephone book yellow page directory. In spite of a dishonest campaign by certain employees of Southern Bell Telephone Company to induce physicians to alter their yellow page listings, a relatively small number of BCMA members responded contrary to our association's Code of Ethics. Those physicians who took advantage of the opportunity to alter their listing and/or subscribe to a small ad in the yellow pages will be summarily called before the Executive Committee of the BCMA to explain their actions.

Let there be no doubt that in spite of the Federal Trade Commission's contention that restriction of advertising is tantamount to restraint of trade, the "principles" of medical ethics in Broward County remain unchanged. Exceptions to the standard yellow page listing, including bold face type, will continue to represent conduct unbecoming to a professional.

It is my hope that tradition will prevail over law.

Phillip A. Caruso, M.D.
President

Complaint

99 F.T.C.

EXHIBIT C

FROM THE SECRETARY OF THE

BCMA



NEWS LETTER

Dear Colleague:

June, 1981

YELLOW PAGE ADVERTISING

Your Executive Committee for years has been waging a campaign against unwarranted listings in the Yellow Pages. The primary reason is that we do not believe such flagrant listings are ethical, for ours is a profession in which dignity is and should be one of our foremost tenets.

The BCMA, as a guardian of the highest principles in medicine, has asked those who broke our unwritten code to swear and offer explanation. Names henceforth will be published in THE RECORD.

The most frequent excuse is a plea of ignorance; that an office girl was responsible.

Come September you will be called again by those who market space in the Yellow Pages. It would behoove you to advise your staff that you alone are responsible for what appears in those listings, and that they must be cleared by your personally. Better that than to suffer the ridicule of your peers!

ON PROFESSIONAL LIABILITY

All insurance codes, including professional liability, is due for review in 1982 by the Florida Legislature.

We have scheduled a special September session on the subject of risk management with FIMCO and you will be kept advised as plans are formulated.

IMPAIRED PHYSICIANS PROGRAM

Member volunteers are being sought for a BCMA committee to work with the Florida Medical Foundation-Florida Medical Association Impaired Physicians Program. Such volunteers will serve primary physicians in their area to monitor physicians who have completed treatment and are returning to their local county.

If you are interested in serving, please contact Bill Stafford at the BCMA offices, (525-2142).

IRISH TRIP CANCELLED

The proposed golf-sightseeing trip to Ireland in August has been cancelled because of lack of participation. Time obviously was too short. We will start at year's end to line up a trip for next July, hoping that this will give more members an opportunity to plan ahead and thus be able to participate.

BCMA TELEVISION SHOW

We have ceased taping our half hour medical show on HBO Channel 25 for the summer but will resume in September. Plans are in process to televise these shows in the Plantation and Hollywood areas futurally. Members interested in appearing on the program when taping is resumed are urged to contact Public Information Director Oscar Fraley (527-0778) for a list of shows we already have done so that you may come up with a new approach.

This is my opening news letter as your new president and I will strive to keep you fully informed of everything we are doing in your interests at the BCMA

Sincerely,

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, 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 the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comment filed thereafter by an interested person pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Broward County Medical Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of Florida, with its office and principal place of business located at 2200 South Andrews Ave., in the City of Fort Lauderdale, State of Florida.

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

ORDER

I.

For purposes of this order, the following definition shall apply:

- A. *BCMA* means respondent Broward County Medical Associa-

tion, its delegates, trustees, councils, committees, Board of Censors, officers, representatives, agents, employees, successors and assigns.

II.

It is ordered, That BCMA shall cease and desist from, directly or indirectly, or through any corporate or other device:

A. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the advertising or publishing by any person of the prices, terms or conditions of sale of physicians' services, or of information about physicians' services, facilities or equipment which are offered for sale or made available by physicians or by any organization with which physicians are affiliated;

B. Restricting, regulating, impeding, declaring unethical, interfering with, or advising against the solicitation, through advertising or by any other means, including but not limited to bidding practices, of patients, patronage, or contracts to supply physicians' services, by any physician or by any organization with which physicians are affiliated; and

C. Inducing, urging, encouraging, or assisting any physician, or any medical association, group of physicians, hospital, insurance carrier, telephone company or any other non-governmental organization to take any of the actions prohibited by this part.

Nothing contained in this part shall prohibit respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited, in-person solicitation of actual or potential patients, who, because of their particular circumstances, are vulnerable to undue influence.

III.

It is further ordered, That BCMA shall cease and desist from taking any formal action against a person alleged to have violated any ethical standard promulgated in conformity with this Order without first providing such person with:

A. Reasonable written notice of the allegations against him or her;

- B. A hearing wherein such person or a person retained by him or her may seek to rebut such allegations; and
- C. The written findings or conclusions of respondent with respect to such allegations.

IV.

It is further ordered, That BCMA shall:

- A. For a period of ten years, provide each new member of BCMA with a copy of the complaint and this Order at the time the member is accepted into membership;
- B. Within sixty (60) days after this Order becomes final, publish a copy of the complaint and this Order with such prominence as feature articles are regularly published in the *BCMA Record* or in any successor publications;
- C. Within ninety (90) days after this Order becomes final, remove from its *Code of Ethics*, its constitution and bylaws, and any other existing policy statements or guidelines of respondent, any provision, interpretation or policy statement which is inconsistent with Part II of this Order, and within one hundred and twenty (120) days after this Order becomes final, publish in the *BCMA Record* or in any successor publications the revised versions of such documents, statements, or guidelines;
- D. Within one hundred and twenty (120) days after this Order becomes final, file a written report with the Federal Trade Commission setting forth in detail the manner and form in which it has complied with this Order;
- E. For a period of five (5) years after this Order becomes final, maintain and make available to the Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising or solicitation involving any of its members; and
- F. Within one year after this Order becomes final, and annually thereafter for a period of five (5) years, file a written report with the Federal Trade Commission setting forth in detail any action taken in connection with the activities covered by Part II of this Order, including but not limited to any advice or interpretations rendered with respect to advertising, or solicitation involving any of its members.

V.

It is further ordered, That BCMA shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, or any other change in the corporation or association which may affect compliance obligations arising out of this Order.