UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of	)	
Stryker Corporation,	)	**DECISION AND ORDER**
a corporation, and	)	**Docket No. C-4728**
Wright Medical Group N.V.,	)	
a corporation.	)	

DECISION

The Federal Trade Commission ("Commission") initiated an investigation of the proposed acquisition by Stryker Corporation ("Stryker") of the voting securities of Wright Medical Group N.V. ("Wright"), collectively "Respondents." The Commission's Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders ("Consent Agreement") containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) 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 the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission's Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same

time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Stryker Corporation is a corporation organized, existing, and doing business under, and by virtue of the laws of, the state of Michigan with its executive offices and principal place of business located at 2825 Airview Boulevard, Kalamazoo, Michigan 49002.

2. Respondent Wright Medical Group N.V. is a corporation organized, existing, and doing business under, and by virtue of, the laws of The Netherlands with its principal place of business located at Prins Bernhardplein 200, Amsterdam, The Netherlands, 1097 JB and its United States address for service of process of the Complaint, the Decision and Order, and the Order to Maintain Assets, is Michael McFalls, Ropes & Gray, 2099 Pennsylvania Avenue, NW, Washington, D.C. 20006.

3. 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. Definitions

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

A. "Stryker" means Stryker Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Stryker Corporation (including Wright Medical Group N.V. after the Acquisition), and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

B. "Wright" means Wright Medical Group N.V., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Wright Medical Group N.V. and the respective directors, officers, general partners, employees, agents, representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. "Acquirer" means: (i) Colfax or (ii) any other Person that acquires the Implant Assets pursuant to this Order.

E. "Acquisition" means the proposed acquisition described in the Purchase Agreement among Stryker Corporation, Stryker B.V. and Wright Medical Group N.V. dated as of November 4, 2019.

F. "Acquisition Date" means the date the Acquisition is consummated.

G. "Business Information" means books, records, data, and information, wherever located and however stored, including documents, written information, graphic materials, and data and information in electronic format. Business Information includes records and information relating to sales, marketing, advertising, personnel, accounting, business strategy, information technology systems, customers, suppliers, research and development, registrations, licenses, permits (to the extent transferable), and operations. For clarity, Business Information includes Respondents' rights and control over information and material provided to any other Person.

H. "Colfax" means Colfax Corporation, 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 420 National Business Parkway, 5th Floor, Annapolis Junction, Maryland.

I. "Competing Products" means any products as of the Divestiture Date that compete with the Implant Products anywhere in the world, including new versions of such products.

J. "Confidential Business Information" means all Business Information not in the public domain that is related to or used in connection with the Implant Assets or the conduct of the Implant Business, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents.

K. "Consent" means any approval, consent, ratification, waiver, or other authorization.

L. "Contract" means all agreements, contracts, licenses, leases, consensual obligations, binding commitments, promises and undertakings (whether written or oral and whether express or implied), whether or not legally binding.

M. "Cost" means costs not to exceed the actual cost of labor, goods and material, travel, third-party vendors, and other expenditures that are directly incurred to provide Transition Assistance.

N. "Divestiture Agreement" means the Asset Purchase Agreement by and between Colfax Corporation and Stryker Corporation, dated October 15, 2020, including related ancillary agreements, amendments, joinders, schedules, exhibits, and attachments, thereto and contemplated therein, that have been approved by the Commission to accomplish the requirements of this Order, attached as Non-Public Appendix I; or (ii) any other agreement between Respondents (or a Divestiture Trustee) and the Acquirer that receives the prior approval of the Commission to divest the Implant Assets, including all related

ancillary agreements, schedules, exhibits, and attachments thereto that have received the Commission's prior approval.

O. "Divestiture Date" means the date on which Respondents (or the Divestiture Trustee) close on a transaction to divest the Implant Assets.

P. "Divestiture Trustee" means the Person appointed by the Commission pursuant to Paragraph IX of this Order.

Q. "Employee Information" means for each Implant Business Employee, to the extent permitted by law, the following information summarizing the employment history of each employee that includes:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. The base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for Respondent's last fiscal year, and current target or guaranteed bonus, if any;

5. Written performance reviews for the past three years, if any;

6. Employment status (*i.e.,* active or on leave or disability; full-time or part-time);

7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

8. At the Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.

R. "Finger Joint Implant Products" means Respondent Stryker's finger joint arthroplasty products, including all products marketed or sold under the following names: Surface Replacement ("SR") Proximal Interphalangeal ("PIP"), SR Metacarpophalangeal ("MCP"), Silicone PIP, Silicone MCP and TACTYS, and the instruments related thereto.

S. "Governmental Permit" means all Consents, licenses, permits, approvals, registrations, certificates, rights, or other authorizations from any governmental entity necessary to effect the complete transfer and divestiture of the Implant Assets to the Acquirer and for such Acquirer to operate the Implant Business.

T. "Implant Assets" means all of Respondent Stryker's right, title, and interest in and to all assets, of every kind and description, wherever located, relating to the Implant Business, including:

1. all Inventory;

2. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;

3. all Governmental Permits and all pending applications therefor or renewals thereof, to the extent transferable;

4. all Business Information; *provided, however,* that in cases in which Business Information included in the Implant Assets contain information: (a) that relates both to the Implant Assets and to other, retained businesses of Respondents and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Implant Assets, or (b) where Respondents have a legal obligation to retain the original copies, then Respondents shall be required to provide only copies of the materials containing such information with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, the Respondents shall provide to such Acquirer access to original materials under circumstances where copies of materials are insufficient for regulatory or evidentiary purposes;

5. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone and telecopy listings; and

6. molds and tooling related to the manufacture of the Implant Products.

Provided further, however, that the Implant Assets need not include the Retained Assets or the Shared Intellectual Property.

U. "Implant Business" means all business activities conducted by Respondent Stryker prior to the Acquisition Date relating to the manufacture and sale of Implant Products anywhere in the world, including researching, developing, manufacturing, and selling Implant Products.

V. "Implant Business Employee" means any full-time, part-time, or contract individual employed by Respondents whose job responsibilities relate or related to any aspect of the Implant Business, as of and after the date of the announcement of the Acquisition.

W. "Implant Products" means:

1. Total Ankle Replacement Products; and

2. Finger Joint Implant Products.

Provided, however, that the Implant Products shall not include the Precision Falcon Blade, K-Wire Tube, X-fuse 2.3 mm Burr, 1/1 Size Silicone Mat VariAx2, Modular Tray Half Size Drawer, and Lower Tray I Level.

X. "Intellectual Property" means intellectual property of any kind including patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, trade secrets, and proprietary information.

Y. "Inventory" means all inventories of every kind and nature for retail sale associated with the Implant Assets.

Z. "License" means a royalty-free, fully paid-up, perpetual, irrevocable, transferable, and sub-licensable license and such tangible embodiments of the licensed rights (including physical and electronic copies) as may be necessary or appropriate to enable the licensee to use the rights.

AA. "Monitor" means any Person appointed by the Commission to serve as a monitor pursuant to this Order or the Order to Maintain Assets.

BB. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.

CC. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.

DD. "Products" means any raw materials, partially finished products, supplies, and any other products relating to the Implant Business that Respondents produce at, or provide from, a facility or a third-party source that is not included in the Implant Assets.

EE. "Retained Assets" means those assets listed on Appendix II.

FF. "Shared Intellectual Property" means the intellectual property identified on Non-Public Appendix V.

GG. "Third Party" means any Person other than the Respondents or the Acquirer.

HH. "Total Ankle Replacement Products" means Respondent Stryker's total ankle joint implant products, including all products marketed or sold under the following name: Scandinavian Total Ankle Replacement System ("STAR"), and the instruments related thereto, and any pipeline products, including those set forth on Non-Public Appendix VI.

II. "Transition Assistance" means technical services, personnel, assistance, training, the supply of Products, and other logistical, administrative, and other transitional support as required by the Acquirer and approved by the Commission to facilitate the transfer of the Implant Assets from the Respondents to the Acquirer, including maintaining existing

design controls, regulatory affairs maintenance and support, complaint handling, clinical study support, sales force training, revalidation support, new packaging supply, software issue support, knowledge transfer support, FDA approval support, transfer support, and retrospective data collection support.

II. Divestiture

IT IS FURTHER ORDERED that:

A. No later than 10 days after the Acquisition Date, Respondents shall divest the Implant Assets, absolutely and in good faith, as an ongoing business, to Colfax pursuant to the Divestiture Agreement.

Provided, however, that Respondents may receive a License back from Acquirer under any Intellectual Property included in the Implant Assets needed by Respondents to operate any business conducted by Stryker prior to the Acquisition that Respondents are not required to divest;

Provided further, however, the Respondents need not divest that portion of a Contract that is not related to the Implant Business, and may exclude the entire Contract, if Acquirer is able to enter into a Contract comparable to the portion relating to the Implant Business;

Provided further, however, the Respondents may need to divest Retained Assets if the Commission, in its sole discretion and within 12 months of the date of this Order is issued, determines in consultation with the Acquirer and the Monitor, that any such assets are necessary for the Acquirer to operate the Implant Assets in a manner that achieves the purpose of this Order.

B. No later than the date the Implant Assets are divested, Respondents shall grant a License to Acquirer under the Shared Intellectual Property sufficient to operate the Implant Business including the freedom to extend existing products and services and develop new products and services anywhere in the world; *provided, however,* that the License granted to Acquirer shall prohibit Respondents from using the relevant Shared Intellectual Property in any business that competes with the post-divestiture Implant Business.

C. If Respondents have divested the Implant Assets to Colfax prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:

1. Colfax is not acceptable as the acquirer of the Implant Assets, then Respondents shall immediately rescind the Divestiture Agreement, and shall divest the Implant Assets no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or

2. The manner in which the divestiture of the Implant Assets to Colfax was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Implant Assets as the Commission may determine are necessary to satisfy the requirements of this Order.

D. Respondents shall obtain, no later than the Divestiture Date and at their sole expense, all Consents from Third Parties and all Governmental Permits that are necessary to effect the complete transfer and divestiture of the Implant Assets to the Acquirer and for the Acquirer to operate any aspect of the Implant Business;

Provided, however, that:

1. Respondents may satisfy the requirement to obtain all Consents from Third Parties by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party that are acceptable to the Commission, or has otherwise obtained all necessary Consents and waivers; and
2. With respect to any Governmental Permits relating to the Implant Assets that are not transferable or not transferred on the Divestiture Date, Respondents shall, to the extent permitted under applicable law, allow the Acquirer to operate the Implant Assets under Respondents' Governmental Permits pending the Acquirer's receipt of its own Governmental Permits, and Respondents shall provide such assistance as the Acquirer may reasonably request in connection with its efforts to obtain such Governmental Permits.

E. Notwithstanding any other provision of this Order, with respect to any Intellectual Property owned by Stryker or Wright, existing, pending, or issued on or before the Acquisition Date, for which there may be an infringement claim relating to the Intellectual Property owned by the other party, Respondents:

1. Shall not join, file, prosecute, or maintain any suit, in law or equity, against the Acquirer, its licensees, or its customers under any Intellectual Property acquired by Stryker in the Acquisition if such suit would limit or impair the Acquirer's freedom to manufacture, distribute, market, sell, or offer for sale any Implant Products anywhere in the world, including new versions of the Implant Products; and

2. May enter into an agreement with the Acquirer in which the Acquirer shall not join, file, prosecute, or maintain any suit, in law or equity, against Respondents, their licensees, or their customers under Intellectual Property included in the Implant Assets or licensed Shared Intellectual Property used in any Competing Products acquired by Stryker from Wright in the Acquisition.

III. Transition Assistance

IT IS FURTHER ORDERED that:

A. Until Respondents have transferred all Business Information included in the Implant Assets, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to records and information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.

B. Respondents shall provide the Acquirer with Transition Assistance sufficient to (i) efficiently transfer the Implant Assets to the Acquirer, and (ii) assist the Acquirer in operating the Implant Assets and Implant Business in all material respects in the manner in which Respondents did so prior to the Acquisition.

C. Respondents shall Provide Transition Assistance:

1. As set forth in the Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);

2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Cost; and

3. For a period sufficient to meet the requirements of this Paragraph, which shall be, at the option of the Acquirer, for up to 36 months after the Divestiture Date. *Provided however,* that upon the Acquirer's request, Respondent must file with the Commission a written request to extend the time period.

D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.

E. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirer of the Divestiture Agreement, and shall not limit any damages (including indirect, special, and consequential damages) that the Acquirer would be entitled to receive in the event of Respondent’s breach of the Divestiture Agreement.

IV. Divestiture Agreement

IT IS FURTHERED ORDERED that:

A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of the Divestiture Agreement shall constitute a violation of this Order; *provided, however*, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with

any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

B. Respondents shall not modify or amend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

V. Asset Maintenance

IT IS FURTHER ORDERED that until the Implant Assets have been fully transferred to the Acquirer, Respondents shall, subject to their obligations under the Order to Maintain Assets, ensure that the Implant Assets and Implant Business are operated and maintained in the ordinary course of business consistent with past practices, and shall:

A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Implant Assets and Implant Business, to minimize any risk of loss of competitive potential of the Implant Assets and Implant Business, to operate the Implant Assets and Implant Business in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Implant Assets and Implant Business, except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, or otherwise impair the Implant Assets and Implant Business (other than in the manner prescribed in this Order and the Order to Maintain Assets), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Implant Assets and Implant Business; and

B. Not terminate the operations of the Implant Assets and Implant Business, and shall conduct or cause to be conducted the operations of the Implant Assets and Implant Business in the ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Implant Assets and Implant Business, and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Implant Assets and Implant Business.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that has been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Implant Assets and consistent with the purposes of this Order and the Order to Maintain Assets.

VI. Employees

IT IS FURTHER ORDERED that:

A. Until one year after the Divestiture Date, Respondents shall cooperate with and assist the Acquirer of the Implant Assets to evaluate independently and offer employment to the Implant Business Employees.

B. Until one year after the Divestiture Date, Respondents shall:

1. No later than 10 days after a request from the Acquirer, provide to the Acquirer a list of all Implant Business Employees and provide Employee Information for each;

2. No later than 10 days after a request from the Acquirer, provide the Acquirer an opportunity to meet outside the presence or hearing of any employee or agent of any Respondent with any of the Implant Business Employees, and to make offers of employment to any of the Implant Business Employees;

3. Remove any impediments within the control of Respondents that may deter Implant Business Employees from accepting employment with the Acquirer, including 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 Acquirer, and shall not make any counteroffer to an Implant Business Employee who receives an offer of employment from the 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;

4. Continue to provide Implant Business Employees compensation and benefits, including regularly scheduled raises and bonuses and the vesting of benefits;

5. Provide reasonable financial incentives for Implant Business Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Implant Business Employees by the Acquirer; and

6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Implant Business Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Implant Business Employee by the Acquirer.

C. Respondents shall not, for a period of 2 years following the Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any of the Implant Business Employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided, however*, Respondents may:

1. Hire an employee whose employment has been terminated by the Acquirer;

2. 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 one or more Implant Business Employees; or

3. Hire an employee who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Paragraph.

VII. Confidentiality

IT IS FURTHER ORDERED that:

A. Respondents shall (i) not disclose (including as to Respondents' employees), and (ii) not use, for any reason or purpose, any Confidential Business Information received or maintained by Respondents, *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of:

1. Performing their obligations or as permitted under this Order, the Order to Maintain Assets, or the Divestiture Agreement; or

2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Implant Assets or Implant Business, or as required by law.

B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph VII.A of this Order, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph VII.A, and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

C. Respondents shall enforce the terms of this Paragraph as to their employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph, including implementation of access and data controls, training of employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

VIII. Monitor

IT IS FURTHER ORDERED that:

A. The Commission appoints Mazars LLP as the Monitor to observe and report on Respondents' compliance with the terms of the Orders. The Monitor shall serve pursuant to the agreement between the Monitor and Respondents contained in the Monitor Agreement Appendix to the Orders, *provided, however,* such agreement shall not limit, or be construed to limit, the terms of the Monitor Paragraph of the Orders.

B. No later than later than one day after the Commission issues the Order to Maintain Assets, Respondents shall:

1. Confer on the Monitor all rights, power, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of the Orders as set forth in the Monitor Paragraph of the Orders; and

2. Consent to the terms and conditions regarding such rights, powers, and authorities of the Monitor set forth in the Monitor Paragraph of the Orders.

C. The Monitor:

1. Shall have the authority to monitor Respondents' compliance with the obligations set forth in the Orders;
2. Shall act in consultation with the Commission or its staff;
3. Shall serve as an independent third party and not as an employee, agent, or fiduciary of Respondents or of the Commission;
4. Shall serve at the expense of Respondents, without bond or other security;
5. May 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 Monitor's duties and responsibilities;
6. Shall enter into a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall enter into such a confidentiality agreement;
7. Shall notify Respondents and staff of the Commission, in writing, of any potential financial, professional, personal, or other conflicts of interest within 5 days should they arise;
8. Within 30 days after the Order to Maintain Assets is issued, and every 90 days thereafter, and at such other times as may be requested by staff of the Commission, the Monitor shall report in writing to the Commission regarding Respondents' compliance with their obligations under the Orders and, where relevant, each Acquirer's progress toward obtaining the product approvals necessary to manufacture each Implant Product acquired by that Acquirer, independently of Respondent; and
9. Shall serve until 30 days after all Divestiture Agreements to provide Transition Assistance have expired or been terminated or until such other time as may be determined by the Commission or its staff.

D. Respondents shall (i) provide the Monitor full and complete access to all information and facilities, and, as necessary, make such arrangements with third parties, to allow the Monitor to monitor Respondents' compliance with its obligations under the Orders, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his/her duties pursuant to the Orders.

E. Respondents shall indemnify and hold the Monitor harmless against losses, claims, damages, liabilities, and expenses (including attorneys' fees and out of pocket costs) that arise out of, or in connection with, any claim concerning the Monitor's performance of the Monitor's duties under the Orders, whether or not such claim results in liability, *except*, to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct. For purposes of this Paragraph, the term "Monitor" shall include all persons retained by the Monitor in the performance of his or her duties under the Orders.

F. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, *provided, however,* that such agreement does not restrict the Monitor from providing any information to the Commission.

G. Respondents shall not require nor compel the Monitor to disclose to Respondents the substance of communications with the Commission, including the Monitor's written reports submitted to the Commission, or any other Person with whom the Monitor communicates in the performance of the Monitor's duties.

H. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor and such substitute Monitor shall be afforded all rights, powers, and authorities and be subject to all obligations of the Monitor Paragraph of the Orders:

1. The Commission shall select the substitute Monitor, subject to the consent of the Respondents, which consent shall not be unreasonably withheld. Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor if, upon notice by staff of the Commission of the identity of the substitute Monitor to Respondents, Respondents have not opposed, in writing, including the reasons for opposing the selection of the substitute Monitor within 10 days after such notice; and

2. No later than 5 days after the Commission appoints a substitute Monitor, Respondents shall enter into an agreement with the substitute Monitor that (i) contains substantially the same terms as the agreement attached as Monitor Agreement Appendix to the Orders, or (ii) is approved by the Commission and confers on the substitute Monitor the rights, powers, and authority of a Monitor under the Monitor Paragraph of the Orders.

I. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II of this Order, the Commission may appoint a Divestiture Trustee to divest the Implant Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor.

B. 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 divest the relevant assets in accordance with the terms of this Order. 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 the Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, 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 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within 10 days after appointment of a Divestiture Trustee, Respondents 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 relevant divestiture or other action required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents 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 relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Implant Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order;

2. The Divestiture Trustee shall have 12 months from 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 12-month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court;

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 IX 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 best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to the Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further*, *however,* that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, 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 Respondents, 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 and, in the case of a court-appointed Divestiture Trustee, by the court, 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 the Respondents, 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. Respondents 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 or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph IX.E.6, the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to this Order;

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Implant Assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and

9. Respondents 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.

F. 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 a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.

G. 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 IX, and who will have the same authority and responsibilities of the original Divestiture Trustee pursuant to this Paragraph IX.

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 divestitures and other obligations or action required by this Order.

X. Prior Notice

IT IS FURTHERED ORDERED that:

A. Respondents shall not, without providing advance written notification to the Commission ("Notification") in the manner described in this Paragraph, acquire, directly or indirectly, through subsidiaries or otherwise, any assets of, or financial interest in, any Person that researches, develops, manufactures, markets, or sells a product that competes with an Implant Product.

B. With respect to the Notification:

1. The Notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended, and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such Notification, Notification shall be filed with the Secretary of the Commission, Notification need not be made to the United States Department of Justice, and Notification is required only of the Respondents and not of any other party to the transaction.

2. Respondents shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until 30 days after submitting such additional information or documentary material.

3. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior Notification shall not be required by this Paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

A. Respondents shall:

1. Notify Commission staff via email at bccompliance@ftc.gov of the Acquisition Date no later than 5 days after the Acquisition Date, and;

2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.

B. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:

1. Respondents shall submit interim compliance reports 30 days after the Order is issued, and every 60 days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III; annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;

2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents shall include in its reports, among other information or documentation that may be necessary to demonstrate compliance a full description of the measures Respondents have implemented or plan to implement to ensure that Respondents have complied or will comply with each paragraph of the Order;

3. Respondents shall retain all material written communications with each party identified in the compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondents' obligations under the Order and provide copies of these documents to Commission staff upon request.

4. Respondents shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov; provided, however, that Respondents need only file electronic copies of the 30-day reports required by Paragraph XI.B.1. In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondent

IT IS FURTHER ORDERED that Respondent Stryker shall notify the Commission at least 30 days prior to:

A. Any proposed dissolution of Stryker Corporation;

B. Any proposed acquisition, merger, or consolidation of Stryker Corporation; or

C. Any other change in Respondent Stryker, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon 5 days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the 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 the Respondents related to compliance with this Order, which copying services shall be provided by the Respondents at their expense; and

B. To interview officers, directors, or employees of the Respondents, who may have counsel present, regarding such matters.

XIV. Purpose

IT IS FURTHER ORDERED that the purpose this Order is to ensure the continued use of the Implant Assets in the same Implant Business in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate on December 11, 2030.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:
ISSUED: December 11, 2020

Non-Public Appendix I

Divestiture Agreement

[Redacted from the Public Version but Incorporated by Reference]

Appendix II

Retained Assets

A. Real property interests owned, leased or otherwise held, including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto;

B. Stryker corporate or business logos, trademarks, service marks, domain names, trade or other names or any deviation thereof not exclusively related to the Implant Business;

C. Manufacturing, inspection, testing, validation, calibration or other types of equipment or fixtures, including power tools, surgical accessories, medical models, and equipment located at a third-party manufacturer not included in Paragraph I.S. (unless any such item is requested by Acquirer);

D. Cash, cash equivalents, accounts receivable, intercompany accounts and any bank or credit card accounts;

E. Pre-paid marketing expenses, grants and donations; tax assets; employee benefit plans; insurance and self-insurance policies and retentions and claims thereunder;

F. Computer hardware and enterprise software that Respondents also use in their businesses other than the Implant Business;

G. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings); and

H. All books, records, files and data relating to (A) income taxes of Respondent Stryker, (B) non-income taxes other than those solely imposed on the Implant Assets, and (C) corporate charters, minute books and similar corporate books and records of any Person.

Appendix III

Monitor Agreement

[Redacted from the Public Version but Incorporated by Reference]

Non-Public Appendix IV

Monitor Compensation

[Redacted from the Public Version but Incorporated by Reference]

Non-Public Appendix V

Shared Intellectual Property

[Redacted from the Public Version but Incorporated by Reference]

Non-Public Appendix VI

Pipeline Total Ankle Replacement Products

[Redacted from the Public Version but Incorporated by Reference]