

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Timothy J. Muris, Chairman  
Sheila F. Anthony  
Mozelle W. Thompson  
Orson Swindle  
Thomas B. Leary

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In the matter of )  
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)  
SOLVAY S.A., )  
a foreign corporation. )  
)  
\_\_\_\_\_)

Docket No. C-4046

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Solvay S.A. (“Solvay”) of certain voting securities of Ausimont S.p.A., and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent 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

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent 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, 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 Respondent 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 this Order to Hold Separate and Maintain Assets (“Hold Separate”):

1. Respondent Solvay S.A. is a corporation organized, existing and doing business under and by virtue of the laws of Belgium, with its office and principal place of business located at Rue du Prince Albert, 33, B-1050 Brussels, Belgium. Respondent’s wholly-owned subsidiary, Solvay America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its principal office and place of business at 3333 Richmond Avenue, Houston, Texas 77098.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS HEREBY ORDERED** that, as used in this Hold Separate, the following definitions shall apply:

- A. “Solvay” means Solvay S.A., a Belgian Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; its subsidiaries, divisions, groups, and affiliates controlled by Solvay S.A., including Solvay America, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Ausimont” means Ausimont S.p.A., an Italian Corporation, and its parents, subsidiaries, divisions, groups, and affiliates controlled by Ausimont.
- C. “Alventia” means Alventia LLC, a limited liability company organized, existing and doing business under the laws of Delaware, and its subsidiaries and divisions, as well as groups and affiliates controlled by Alventia. Alventia does not include Dyneon LLC or Solvay.
- D. “Commission” means the Federal Trade Commission.
- E. “Respondent” means Solvay S.A.
- F. “Acquirer” means each Person approved by the Commission to acquire the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont -

New Jersey Fluoropolymers Business.

- G. “Acquisition” means the proposed acquisition of Ausimont by Solvay, as described in the December 21, 2001, Share Purchase Agreement between Montedison S.p.A., Longside International S.A. and Solvay S.A.
- H. “Actual Cost” means Respondent’s direct out-of-pocket expenses incurred in providing a service.
- I. “Asset Purchase Agreement” means all agreements submitted to and approved by the Commission between Solvay and the Acquirer that sell, assign, or otherwise convey the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business or the Ausimont - New Jersey Fluoropolymers Business to one or two Acquirers.
- J. “Ausimont - New Jersey Fluoropolymers Business” means all of Solvay’s right, title, and interest acquired in the Acquisition in all assets and businesses in the world relating to the research, development, manufacture, marketing, sale, and distribution of PVDF at, from, and by the Ausimont Thorofare Plant, including, but not limited to:
1. the Ausimont Thorofare Plant;
  2. the Ausimont Thorofare VF<sub>2</sub> Plant (subject to the proviso below)
  3. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF;
  4. all personal property;
  5. all intellectual property, including but not limited to Ausimont PVDF Production Information, trademarks, patents, mask works, copyrights, trade secrets, research materials, technical information, management information systems, software, inventions, test data, technological know-how, licenses, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas;
  6. all contracts entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
  7. all governmental approvals, consents, licenses, permits, waivers, or other authorizations;

8. all warranties and guaranties, express or implied;
9. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, dedicated management information systems, information contained in management information systems, rights to software, technology, know-how, ongoing research and development, specifications, designs, drawings, processes and quality control data;
10. all customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files;
11. all books, records, and files;
12. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies;
13. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods; and,
14. all items of prepaid expense.

*Provided, however,* that the Ausimont - New Jersey Fluoropolymers Business does not include: (a) the HCFC 142b manufacturing equipment located at the Ausimont Thorofare Plant; (b) any assets used exclusively in the research, development, manufacture or sale of fluoroelastomers or any other product unrelated to PVDF; and (3) those assets described in Confidential Exhibit 1.

- K. “Ausimont - New Jersey Fluoropolymers Employees” means all full-time, part-time, or contract employees of Solvay:
1. whose duties on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business directly or indirectly, wholly or in part, relate to the Ausimont - New Jersey Fluoropolymers Business;
  2. whose duties related primarily to the Ausimont - New Jersey Fluoropolymers Business at any time during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business; or,
  3. who performed duties that related directly or indirectly, wholly or in part, to the

Ausimont - New Jersey Fluoropolymers Business for all or any part of a day for a cumulative one hundred (100) work days (whether consecutive days or not) during the period commencing twelve-months prior to the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business and ending on the Effective Date of Divestiture of the Ausimont - New Jersey Fluoropolymers Business.

*Provided, however,* that Ausimont - New Jersey Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 2 (“Ausimont Retained Employees”).

- L. “Ausimont - New Jersey Fluoropolymers Key Employees” means any Ausimont - New Jersey Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within the Ausimont - New Jersey Fluoropolymers Business.
- M. “Ausimont PVDF Production Information” means all information relating to the past, present, planned, developed or researched production of each grade of PVDF, whether at the Ausimont Thorofare Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest pursuant to the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, all specifications for all products sold to all customers, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed or researched production by Ausimont of any grades of PVDF in the ordinary course of business.
- N. “Ausimont Thorofare Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of PVDF.
- O. “Ausimont Thorofare VF<sub>2</sub> Plant” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Ausimont and located in Thorofare, New Jersey and the immediate vicinity used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of VF<sub>2</sub>.
- P. “Decatur PVDF Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Solvay and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or

indirectly related to the research, development, manufacture, marketing, sale, and distribution of PVDF.

- Q. “Decatur VF<sub>2</sub> Plant” means all buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of Alventia and located in Decatur, Alabama, and the immediate vicinity, used for any purpose directly or indirectly related to the research, development, manufacture, marketing, sale, and distribution of VF<sub>2</sub>.
- R. “Decision and Order” means:
1. until the issuance of a final Decision and Order by the Commission, the proposed Decision and Order incorporated into and made a part of the Consent Agreement; or,
  2. following the issuance of a final Decision and Order by the Commission, the Decision and Order issued by the Commission.
- S. “Divestiture Agreements” means:
1. the Asset Purchase Agreement;
  2. the Non-Exclusive PVDF Technology License;
  3. the Non-Exclusive VF<sub>2</sub> Technology License;
  4. Non-Exclusive Ausimont Technology License;
  5. the Trademark License;
  6. the Supplemental Rights Agreement; and,
  7. any other agreements between Solvay and each Acquirer related to the divestiture.
- T. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph V. of the Decision and Order.
- U. “Effective Date of Divestiture” means the date on which the divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, to the Acquirer is consummated.
- V. “HCFC-142b” means hydrochlorofluorocarbon 142b which, among other uses, is used as a raw material in the manufacture of VF<sub>2</sub>.

- W. “Hold Separate” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- X. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the date that the Acquisition is consummated and terminated pursuant to Paragraph VII. hereof.
- Y. “Monitor Trustee” means the trustee appointed pursuant to Paragraph IV. of this Order.
- Z. “Non-Exclusive VF<sub>2</sub> Technology License” means a non-exclusive, royalty free, fully assignable license, to the Acquirer, with the right to sub-license, to make, use, and sell VF<sub>2</sub> anywhere in the world using all of the intellectual property controlled by Solvay which relates to the research, development, manufacture or sale of VF<sub>2</sub>; *provided, however,*





- i. all customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files relating to the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
  - j. all books, records, and files relating to SFI or the Decatur PVDF Plant (whether in the actual possession of Solvay, SFI, or Solvay America, Inc.);
  - k. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies relating to the Decatur PVDF Plant;
  - l. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the Decatur PVDF Plant;
  - m. all items of prepaid expense relating to the Decatur PVDF Plant; and
  - n. any other tangible or intangible right, asset, or property relating to the Decatur PVDF Plant;
2. a non-exclusive, royalty free, fully assignable license, to the Acquirer (“Non-Exclusive PVDF Technology License”), with the right to sub-license, to make, use, and sell PVDF anywhere in the world using all Solvay PVDF Production Information and all other intellectual property (other than the SOLEF® trademark) used at any time by SFI or at the Decatur PVDF Plant, or at other Solvay plants and facilities, or relating to the research, development, manufacture or sale of PVDF, including, but not limited to, intellectual property and other intangible property related to PVDF grades sold by SFI manufactured at locations other than the Decatur PVDF Plant; *provided, however,* the Non-Exclusive PVDF Technology License shall not require Solvay or the Acquirer to provide or license to the other party to the Non-Exclusive PVDF Technology License any improvements to any patents or other intellectual property granted, invented, researched, or developed after the Effective Date of Divestiture.
  3. a non-exclusive, royalty free, fully assignable, one-year license to the Acquirer to use the SOLEF® trademark in its marketing, sale, and distribution of PVDF (“Trademark License”);

4. a list of customers outside the United States who have purchased PVDF from Solvay within the three years preceding the Effective Date of Divestiture;
5. a copy of all vendor lists, catalogs, sales promotion literature, and advertising materials used by Solvay in connection with sales of PVDF to any Person outside of the United States within the three years preceding the Effective Date of Divestiture;
6. a copy of any computer software located anywhere in the world that relates to the research, development, manufacture, marketing, sale, or distribution of any substance, compound, or product manufactured at the Decatur PVDF Plant;
7. all machinery, equipment, testing equipment, and tools that: (a) are physically located at the Decatur PVDF Plant as of the Effective Date of Divestiture that relate to the research, development, manufacture, marketing, sale or distribution of PVDF at or by the Decatur PVDF Plant or SFI; or (b) at any time within one year of the Effective Date of Divestiture have been physically located at the Decatur PVDF Plant; and,
8. tangible or intangible assets located anywhere in the world that are used exclusively to, or have been used exclusively to, manufacture, market, sell, or distribute PVDF at or by the Decatur PVDF Plant or SFI.

*Provided, however, that*

(a) Respondent may retain a list of the twenty (20) largest PVDF customers in the United States, as measured by volumes delivered in the United States, for each of the last three years;

(b) Respondent may retain all contract rights and copies of files to the extent they are related solely to Solvay PVDF sales in the United States that have not been supplied by production from the Decatur PVDF Plant within twelve (12) months before the date this Order is accepted for public comment; and,

(c) Solvay Fluoropolymers Business does not include any assets used exclusively in the research, development, manufacture or sale of fluoroelastomers or any other product unrelated to PVDF.

HH. “Solvay Fluoropolymers Employees” means:

1. all full-time, part-time, or contract employees of SFI at any time within one year of the Effective Date of Divestiture of the Solvay Fluoropolymers Business; and,

2. all full-time, part-time, or contract employees of Solvay (but excluding employees of SFI) the services of which, wholly or in part, were billed, paid, charged, or invoiced (to the extent such charges can be specifically identified) by or to SFI or Alventia at any time within one year of the Effective Date of Divestiture, but excluding those employees who provided legal, accounting or other purely administrative support to SFI.

*Provided, however,* that Solvay Fluoropolymers Employees do not include the Persons listed on Confidential Exhibit 3 (“Solvay Retained Employees”).

- II. “Solvay Fluoropolymers Hold Separate Trustee” means the Solvay Fluoropolymers Hold Separate Trustee appointed pursuant to Paragraph III. of this Hold Separate.
- JJ. “Solvay Fluoropolymers Key Employees” means any Solvay Fluoropolymers Employees identified as such in the Asset Purchase Agreement, or who at the time of the Acquisition were identified as managers within SFI.
- KK. “Solvay Fluoropolymers Manager” means an individual with experience in the management, sales, marketing, and financial operations of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, who is appointed by the Respondent and approved by the Solvay Fluoropolymers Hold Separate Trustee to manage the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business during the Hold Separate Period.
- LL. “Solvay PVDF Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of PVDF, whether at the Decatur PVDF Plant, or at any other PVDF plant in which Solvay holds a legal or equitable ownership or management interest, other than through the Acquisition, and includes all proprietary and public information relating to the specifications for each grade of PVDF, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed, or researched production by Solvay of any grades of PVDF in the ordinary course of business. Solvay PVDF Production Information does not include the supercritical carbon dioxide technology that Solvay has licensed from the University of North Carolina and the know-how defined in Definition I.V.(1).(d).
- MM. “Solvay VF<sub>2</sub> Joint Venture Business” means Respondent’s ownership interest in Alventia, including any other interests or rights of Solvay associated with Solvay’s ownership in Alventia.

NN. “VF<sub>2</sub>” means vinylidene fluoride monomer.

## II.

### IT IS FURTHER ORDERED THAT:

- A. During the Hold Separate Period, Respondent shall (i) hold the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business as a separate and independent business as required by this Hold Separate, except to the extent that Respondent must exercise direction and control over the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business to assure compliance with this Hold Separate, or with the Decision and Order, and except as otherwise provided in this Hold Separate, and (ii) shall vest the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business with all powers and authorities necessary to conduct its business.
- B. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any leases or licenses that expire or terminate prior to the Effective Date of Divestiture.
- C. The purpose of this Hold Separate is to: (i) preserve the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business as viable, competitive, and ongoing businesses, independent of Respondent, until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business Assets; (ii) preserve the Ausimont - New Jersey Fluoropolymers Business as a viable, competitive, and ongoing business until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business; (iii) assure that no Material Confidential Information is exchanged between Respondent and the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, except as otherwise provided in this Hold Separate; and (iii) prevent interim harm to competition pending divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont

- New Jersey Fluoropolymers Business.

### **III.**

#### **IT IS FURTHER ORDERED THAT:**

- A. Rajiv Gupta is hereby appointed to serve as the Solvay Fluoropolymers Hold Separate Trustee. The Solvay Fluoropolymers Hold Separate Trustee may be the same Person as the Divestiture Trustee or the Monitor Trustee.
- B. The Solvay Fluoropolymers Hold Separate Trustee shall monitor Respondent's compliance with this Hold Separate, and shall have all powers and authority necessary to effectuate his or her responsibilities pursuant to this Hold Separate and shall have the rights, duties and responsibilities described below:
  - 1. No later than ten (10) days after the execution of the Consent Agreement, Respondent shall execute a Solvay Fluoropolymers Hold Separate Trustee Agreement that, subject to the approval of the Commission, transfers to the Solvay Fluoropolymers Hold Separate Trustee all rights, powers and authorities contained in the Consent Agreement or necessary to permit the Solvay Fluoropolymers Hold Separate Trustee to perform his or her duties and obligations pursuant to this Hold Separate and the Decision and Order.
  - 2. No later than one (1) day after the commencement of the Hold Separate Period, Respondent shall transfer to the Solvay Fluoropolymers Hold Separate Trustee all rights, powers, and authorities necessary to permit the Solvay Fluoropolymers Hold Separate Trustee to perform his or her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Decision and Order contained in the Consent Agreement.
  - 3. The Solvay Fluoropolymers Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Decision and Order, for monitoring the organization of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business; for managing the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business through the Solvay Fluoropolymers Manager; for maintaining the independence of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business; and for assuring Respondent's compliance with its obligations pursuant to this Hold Separate and the Decision and Order.
  - 4. The Solvay Fluoropolymers Hold Separate Trustee shall have full and complete

access to all personnel, books, records, documents and facilities of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, or to any other relevant information of the Respondent relating to the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, or to any other relevant information relating to Respondents' obligations under the Decision and Order and/or under this Hold Separate, as the Solvay Fluoropolymers Hold Separate Trustee may reasonably request. Respondent shall develop such financial or other information as the Solvay Fluoropolymers Hold Separate Trustee may reasonably request and shall cooperate with the Solvay Fluoropolymers Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Solvay Fluoropolymers Hold Separate Trustee's ability to perform his or her responsibilities consistent with the terms of this Hold Separate or to monitor Respondent's compliance with this Hold Separate or the Decision and Order.

5. The Solvay Fluoropolymers Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonable and necessary to carry out the Solvay Fluoropolymers Hold Separate Trustee's duties and responsibilities. The Solvay Fluoropolymers Hold Separate Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
6. The Commission may require the Solvay Fluoropolymers Hold Separate Trustee to sign an appropriate confidentiality agreement relating to materials and information received from the Commission, and Material Confidential Information received from Respondent, in connection with the performance of the Solvay Fluoropolymers Hold Separate Trustee's duties.
7. The Respondent may require the Solvay Fluoropolymers Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, to anyone other than the Commission. However, nothing herein shall be construed to inhibit the communication of any Material Confidential Information between the Solvay Fluoropolymers Hold Separate Trustee and the individuals contemplated for the employment

Commission may appoint a substitute Solvay Fluoropolymers Hold Separate Trustee. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Solvay Fluoropolymers Hold Separate Trustee within ten (10) business days after receipt of written notice from the Commission's staff to Respondents of the identity of any proposed Solvay Fluoropolymers Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed Solvay Fluoropolymers Hold Separate Trustee.

- C. No later than ten (10) days after the execution of the Solvay Fluoropolymers Hold Separate Trustee Agreement, Respondent shall, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee, enter into a management agreement with, and transfer to the Solvay Fluoropolymers Manager all rights, powers, and authorities necessary to permit the Solvay Fluoropolymers Manager to perform his or her duties and responsibilities, pursuant to the Hold Separate and consistent with the purposes of the Decision and Order.
1. The Solvay Fluoropolymers Manager, in his or her capacity as such, shall report directly and exclusively to the Solvay Fluoropolymers Hold Separate Trustee, and shall manage the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business independently of the management of Respondent. The Solvay Fluoropolymers Manager shall not be involved in any way in the operations of the Respondent's businesses (other than the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business) during the Hold Separate Period.
  2. The Solvay Fluoropolymers Manager shall sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business to anyone other than the Solvay Fluoropolymers Hold Separate Trustee and the Commission.
  3. In the event the Solvay Fluoropolymers Manager ceases to act in his or her capacity as such, then Respondent shall select a substitute Solvay Fluoropolymers Manager, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee, and transfer to the substitute Solvay Fluoropolymers Manager all rights, powers and authorities necessary to permit the substitute Solvay Fluoropolymers Manager to perform his or her duties and responsibilities, pursuant to this Hold Separate.
  4. Respondent shall not change the composition of the management of the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business except that

the Solvay Fluoropolymers Manager shall be permitted to remove management employees for cause subject to approval of the Solvay Fluoropolymers Hold Separate Trustee. The Solvay Fluoropolymers Hold Separate Trustee shall have the power to remove the Solvay Fluoropolymers Manager for cause. Within fifteen (15) days after such removal, Respondent shall appoint a replacement for the Solvay Fluoropolymers Manager, subject to the approval of the Solvay Fluoropolymers Hold Separate Trustee in the same manner as provided in Paragraph III. of this Hold Separate.

5. The Solvay Fluoropolymers Manager shall have no financial interests affected by Respondent's revenues, profits or profit margins, except that the Solvay Fluoropolymers Manager's compensation for managing the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business may include economic incentives dependent on the financial performance of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business if there are also sufficient incentives for the Solvay Fluoropolymers Manager to operate the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business at no less than current rates of operations (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate. For a period of two (2) years beginning after the termination of this Hold Separate, Respondent shall not retain the services of the Solvay Fluoropolymers Manager.
6. The Solvay Fluoropolymers Manager shall make no material changes in the present operation of the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business except with the approval of or at the instruction of the Solvay Fluoropolymers Hold Separate Trustee.
7. In addition to the Solvay Fluoropolymers Employees, the Solvay Fluoropolymers Manager shall employ such employees as are reasonably necessary to assist the Solvay Fluoropolymers Manager in managing the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, including, without limitation, pricing services personnel, employee relations personnel, Solvay67w (Ses o) Tolida) and tolvalyy Fployee relatbe Solvay the



D. Respondent shall assure that the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business are staffed with employees sufficient to maintain the marketability, viability, and competitiveness of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business. Solvay Fluoropolymers Employees shall include (i) all Solvay Fluoropolymers Employees employed by Solvay as of the date the Commission accepts the Consent Agreement for public comment; and, (ii) those persons hired from other sources. The Solvay Fluoropolymers Manager, with the approval of the Solvay Fluoropolymers Hold Separate Trustee, shall have the authority to replace employees who have otherwise left their positions with the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business since March 1, 2001. To the extent that Solvay Fluoropolymers Employees leave the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business prior to the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, the Solvay Fluoropolymers Manager, with the approval of the Solvay Fluoropolymers Hold Separate Trustee, shall use reasonable efforts to replace the departing Solvay Fluoropolymers Employees with persons who have similar experience and expertise.

1. Respondent shall cause the Solvay Fluoropolymers Manager and each Solvay Fluoropolymers Employee with managerial responsibilities having access to Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business to sign an agreement to maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint

Business on the Solvay VF<sub>2</sub>

3. No later than one (1) business day after the commencement of the Hold Separate Period, Respondent shall circulate to the Solvay Fluoropolymers

Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business authorized prior to the date the Consent Agreement is executed;

3. to perform all ordinary and necessary maintenance to, and replacements of, assets of the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business;
4. to maintain the viability, competitiveness, and marketability of the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business until the Effective Date of Divestiture, provided neither the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, nor the Ausimont - New Jersey Fluoropolymers Business may assume any new long-term debt, except as necessary to meet a competitive threat and, with respect to the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, as approved by the Solvay Fluoropolymers Hold Separate Trustee; and,
5. such financial resources to be provided to the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers 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, the Solvay Fluoropolymers Hold Separate Trustee may reduce the scale or pace of any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

H. Respondent shall, at the option of the Solvay Fluoropolymers Manager, and with the approval of the Solvay Fluoropolymers Hold Separate Trustee, continue to provide the same support services to the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business as are being provided to such assets and business as of the date Respondent executes the Consent Agreement; provided:

1. Respondent may charge the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business the same fees, if any, charged by Respondent for such support services as of the date Respondent executes the Consent Agreement; and,
2. Respondent shall ensure that all personnel providing such support services retain and maintain all Material Confidential Information relating to the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business on a

confidential basis, and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's businesses (other than the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business). Such personnel shall also be required to execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information relating to the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business.

Nothing herein shall require Respondent to hold separate the operations, assets or personnel used to provide the following support services to the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business during the Hold Separate Period, provided that Respondents adhere to the confidentiality obligations contained herein:

- (4) Public affairs/media relations services;
- (2) Legal services;
- (3) Preparation of tax returns and other audit services;
- (4) Information systems services, including construction, maintenance and support of all SAP and other computer systems;
- (5) Medical services, including drug testing;
- (6) Processing of accounts payable;
- (7) Security services;
- (8) Technical support;
- (9) Financial accounting services;
- (10) Engineering services, including engineering, design and maintenance of plants and terminals;
- (11) Real estate services, including the identification and development of new site;
- (12) Procurement of goods and services utilized in the ordinary course of business by the Solvay Fluoropolymers Business or the Solvay VF<sub>2</sub> Joint Venture Business;
- (13) Human resources and Employee Benefits; and

(14) Transportation and other logistics services.

3. Except as provided in this Hold Separate and the Decision and Order, Respondent shall not employ or make offers of employment to any Solvay Fluoropolymers Employee during the Hold Separate Period. The Acquirer of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub>Re'ke bligransps uw (ny Solvay) TJ717 w3hb wj717 w3.4112 ion any48



regular and ordinary course of business and in accordance with past practice (including regular repair and maintenance efforts) and shall use their best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relationships with the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business, in the ordinary course of business and in accordance with past practice. Respondent shall use its best efforts to keep the organization and properties of the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business intact, including current business operations, physical facilities and working conditions, and a work force of equivalent size, training, and expertise associated with the Solvay Fluoropolymers Business, the Solvay VF<sub>2</sub> Joint Venture Business, and the Ausimont - New Jersey Fluoropolymers Business.

- B. Until the Effective Date of Divestiture of the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business, or the Ausimont - New Jersey Fluoropolymers Business, Respondent shall ensure that the Solvay Fluoropolymers Employees and the Ausimont - New Jersey Fluoropolymers Employees continue to be paid their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled.
- C. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating and meeting obligations under agreements to divest assets pursuant to the Decision and Order contained in the Consent Agreement and engaging in related due diligence, or complying with this Hold Separate or the Decision and Order contained in the Consent Agreement, Respondent shall not receive or have access to, or use or continue to use, any Non-Public Solvay Fluoropolymers Information. Nor shall the Solvay

sixty (60) days thereafter until the Hold Separate terminates, the Solvay Fluoropolymers Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Solvay Fluoropolymers Hold Separate Trustee's assessment of the extent to which the Solvay Fluoropolymers Business and the Solvay VF<sub>2</sub> Joint Venture Business is meeting (or exceeding) projected goals as reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

## V.

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

## VI.

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

- A. Access, during office hours of 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 Respondent relating to compliance with this Hold Separate; and,
- B. Upon five (5) days notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.





## ATTACHMENT A

### NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Solvay S.A., hereinafter referred to as “Respondent,” has entered into an Agreement Containing Consent Orders (“Consent Agreement”) with the Federal Trade Commission relating to the divestiture of certain assets. As used herein, the term “Solvay PVDF and VF<sub>2</sub> Business” means all of Respondent’s right, title, and interest in Solvay Fluoropolymers, Inc., including the PVDF production plant at Decatur, Alabama, and in Alventia LLC, and other rights related to the manufacture and sale of VF<sub>2</sub> anywhere in the world. In addition, as used herein the term “Ausimont PVDF and VF<sub>2</sub> Business” means all of Ausimont’s assets and businesses in the world relating to PVDF and VF<sub>2</sub>, including the Ausimont PVDF and VF<sub>2</sub> plants at Thorofare, New Jersey. Additional information about the Consent Agreement, as well as a copy of the Consent Agreement and proposed order, can be found on the web site of the Federal Trade Commission at [www.FTC.gov](http://www.FTC.gov).

Under the terms of the Consent Agreement, if the Respondent fails to divest the Solvay PVDF and VF<sub>2</sub> Business within 180 days from the date upon which Solvay and Ausimont consummate the Acquisition, a trustee will be appointed to divest either the Solvay PVDF and VF<sub>2</sub> Business or the Ausimont PVDF and VF<sub>2</sub> Business.

The Solvay PVDF and VF<sub>2</sub> Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of the Respondent, including but not limited to Ausimont, until the Solvay PVDF and VF<sub>2</sub> Business is divested. All competitive information relating to the Solvay PVDF and VF<sub>2</sub> Business must be retained and maintained by the persons involved in the operation of the Solvay PVDF and VF<sub>2</sub> Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other business of the Respondent, including but not limited to Ausimont. Similarly, persons involved in similar activities at Solvay or Ausimont shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Solvay PVDF and VF<sub>2</sub> Business.

Until either the Solvay PVDF and VF<sub>2</sub> Business or the Ausimont PVDF and VF<sub>2</sub> Business is divested, Solvay must take such actions as are necessary to maintain the viability and marketability of the Solvay PVDF and VF<sub>2</sub> Business and the Ausimont PVDF and VF<sub>2</sub> Business, to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification signs, and renewing or extending any leases or licenses that expire or terminate prior to the Effective Date of Divestiture.

Any violation of the Consent Agreement may subject Respondent to civil penalties and other relief as provided by law.