

**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**

**One Rock Capital Partners II, LP**  
**a limited partnership,**

**FXI Holdings, Inc.**  
**a corporation,**

**and**

**Bain Capital Fund XI, LP**  
**a limited partnership,**

**and**

**Innocor, Inc.**  
**a corporation.**

**Docket No. C-4708**

**ORDER TO MAINTAIN ASSETS**





1. Make any payment required to be paid under any contract or lease when due, and otherwise satisfy all liabilities and obligations associated with the Assets To Be Maintained;
2. Provide the Assets To Be Maintained with sufficient financial and other resources to operate at least at current rates of operation, to meet all capital calls, to perform routine or necessary maintenance, to repair or replace facilities and equipment, and to carry on at least at their scheduled pace all capital projects, business plans, development projects, and commercial activities;
3. Provide such other resources as may be necessary to respond to competition against the Assets To Be Maintained, prevent diminution in sales of the Assets To Be Maintained, and maintain the competitive strength of the Assets To Be Maintained;
4. Provide support services at levels customarily provided by Respondents;
5. Maintain all licenses, permits, approvals, authorizations, or certifications related to or necessary for the operation of the Assets To Be Maintained, and otherwise operate the Assets To Be Maintained in accordance and compliance with all regulatory obligations and requirements;
6. Maintain the Business Information of the Assets To Be Maintained;
7. Maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with the Assets To Be Maintained, including:
  - a. Continuing to provide each of the Polyurethane Foam Employees with all employee benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all benefits;
  - b. Providing reasonable financial incentives to encourage Polyurethane Foam Employees to continue in his or her position until the Divestiture Date, and as may be necessary to facilitate the employment of such Polyurethane Foam Employees by the proposed Acquirer following the Divestiture Date;
  - c. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
  - d. Not transferring any of the Polyurethane Foam Employees to any of Respondents' assets or businesses that Respondents will not be divesting; and



who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of III.B.1 and III.B.2 above;

Provided, however, that nothing in this Paragraph III shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to the Decision and Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order to Maintain Assets and the Decision and Order.

- C. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- D. No later than 10 days after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- E. Notwithstanding this Paragraph III of this Order to Maintain Assets, and subject to the Decision and Order, Respondent may use Confidential Business Information:
  - 1. For the purpose of performing Respondents' obligations under this Order to Maintain Assets, the Decision and Order, or a Divestiture Agreement; and
  - 2. For purposes of complying with financial reporting requirements, obtaining legal advice, ensuring compliance with legal and regulatory requirements, prosecuting or defending legal claims, conducting investigations, or as otherwise required by law.
- F. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the Polyurethane Foam Assets, including Contracts and Governmental Authorizations. Respondents may satisfy this requirement for a required Consent by certifying that the Acquirer has equivalent arrangements or has otherwise directly obtained the necessary Consent.

Provided however, it is not a violation of this provision for Respondents not to transfer a Contract or Governmental Authorization that Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents) so long as (i) prior to signing the Consent Order, Respondents inform Commission staff and the Acquirer that they cannot transfer the relevant Contract or Governmental Authorization, and (ii)



#### IV. Monitor

**IT IS FURTHER ORDERED** that:

A. Edward J. Buthusiem shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix IV (“Monitor Agreement”) and Non-Public Appendix IV-1 (“Monitor Compensation”) to the Decision and Order. The Monitor is appointed to monitor Respondents’ compliance with the terms of this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.

B. No later than 1 day after the date this Order to Maintain Assets is issued, Respondents



G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the

in a manner consistent with the purposes of the orders and in consultation with the Commission.

- L. 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 this Order to Maintain Assets, the Decision and Order, and the Divestiture Agreement.
- M. The Monitor appointed pursuant to this Order to Maintain Assets may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of the Decision and Order.

### **V. Compliance Reports**

**IT IS FURTHER ORDERED** that Respondents FXI and One Rock Capital shall file verified written reports (“compliance reports”) in accordance with the following:

- 1. Within 30 days after this Order to Maintain Assets is issued, and every 30 days thereafter until this Order to Maintain Assets terminates, Respondents FXI and One Rock Capital shall submit to the Commission verified written reports (“compliance reports”) setting

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submitted by Respondents FXI and One Rock Capital pursuant to the Decision and Order.

**VI. Change in Respondent**

~~IT IS FURTHER ORDERED THAT Respondent One Rock Capital, LLC shall comply with the terms of the Decision and Order of the Commission in the above-captioned matter.~~

## **IX. Term**

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

- A. 3 business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. The day after Respondents' (or a Divestiture Trustee's) completion of the divestitures required by Paragraph II of the Decision and Order;

Provided, however, that if at the time such divestitures have been completed, the Decision and Order in this matter is not yet final, then this Order to Maintain Assets shall terminate three business days after the Decision and Order becomes final;

Provided, further, however, that if the Commission, pursuant to Paragraph II.C of the Decision and Order, requires the Respondents to rescind the divestitures to Future Foam,