

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra

ORDER

I. Definitions

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

- A. “FXI” means FXI Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by FXI Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “One Rock Capital” means One Rock Capital Partners II, LP, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by One Rock Capital Partners II, LP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Innocor” means Innocor, Inc., its directors, o

technology, engineering, product formulations, production, sales, marketing, logistics, advertising, personnel, accounting, business strategy, information technology systems, customers, customer purchasing histories, customer preferences, delivery histories, delivery routing information, suppliers and all other aspects of the Polyurethane Foam Business or Polyurethane Foam Assets. For clarity, Business Information includes Respondents' right and control over information and material provided to any other person.

K. "Confidential Business Information" means any non-public Business Information relating to the Polyurethane Foam Assets and Polyurethane Foam Business:

1. Obtained by Respondents prior to the Divestiture Date; or
2. Obtained by Respondents after the Divestiture Date, in the course of performing Respondents' obligations under this Order or any Divestiture Agreement (including any Transition Assistance agreement);

Provided, however, that Confidential Business Information shall not include:

1. Information that is in the public domain when received by Respondents;
2. Information that is not in the public domain when received by Respondents and thereafter becomes public through no act or failure to act by Respondents;
3. Information that Respondents develop or obtain independently, without violating any applicable law or this Order, and without breaching any confidentiality obligation with respect to the information; and
4. Information that becomes known to Respondents from a third party not in breach of applicable law or a confidentiality obligation with respect to the information.

L. "Consent" means any approval, consent, ratification, waiver, or ot

- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IX of this Order.
- R. “Elkhart Polyurethane Foam Facility” means Respondent Innocor’s polyurethane foam production facilities located at 1900 West Lusher Road in Elkhart, Indiana, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.
- S. “Employee Information” means, for each Polyurethane Foam Employee, the following information summarizing the employment history of each employee that includes, as requested by the proposed Acquirer and to the extent permitted by applicable law:
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 annua

Washington, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.

- Y. “Key Employees” means the employees listed at Appendix II to this Order.
- Z. “Monitor” means the person approved by the Commission to serve as a Monitor pursuant to this Order or the Order to Maintain Assets.
- AA. “Polyurethane Foam Assets” means all of Respondent’s legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to the Polyurethane Foam Business (including any such assets removed and not replaced after the announcement of the Acquisition, other than

- e. Enterprise software that Respondents also use in their businesses other than the Polyurethane Foam Business;
- f. The portion of Business Information that contains information about any business other than the business divested to an Acquirer;
- g. Any original document that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and
- h. The following assets, unless the Commission, in its sole discretion and within 12 months of the date 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 Polyurethane Foam Assets or Polyurethane Foam Business in a manner that achieves the purposes of this Order:
 - i. Excluded Assets; and
 - ii. Shared Intellectual Property, but only if the Shared Intellectual Property License is granted pursuant to Paragraph II of this Order.

BB. “Polyurethane Foam Business” means the applicable Respondent’s business of manufacturing, fabricating, and selling polyurethane foam and related products at the Polyurethane Foam Facilities.

CC. “Polyurethane Foam Employees” means: (1) w

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this Order, which may include entering into additional agreements or arrangements, or modifying a Divestiture Agreement.

- D. Respondents shall deliver the Business Information to the Acquirer as soon as practicable in a manner that ensures their completeness, accuracy and usefulness and meets the reasonable requirements of the Acquirer.
- E. 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) Respondents assist the Acquirer in obtaining an equivalent Contract or Governmental Authorization.
- F. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the Polyurethane Foam Assets) with a due diligence investigation of the Polyurethane Foam Assets and the Polyurethane Foam Business, including by providing sufficient and timely access to all information and employees customarily provided as part of a due diligence process.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

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

IV. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information included in the Polyurethane Foam Assets, Respondents shall provide the Acquirer with access to records and information (wherever located and however stored) included in the Business Information 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 Polyurethane Foam Assets to the Acquirer and (ii) assist the Acquirer in operating the Polyurethane Foam Assets and Polyurethane Foam Business in a manner equivalent in all material respects to the manner in which Respondents did so prior to the Acquisition, and shall Provide Transition Assistance:
 - 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. At the price set forth in a Divestiture Agreement, or if no price is set forth, at Direct 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 12 months after the Divestiture Date.
- C. Respondents shall not cease providing Transition Assistance due to a breach by the Acquirer of a Divestiture Agreement, and shall not limit the damages (including indirect, special, and consequential damages) that an Acquirer is entitled to receive in the event of Respondents' breach of an agreement to provide Transition Assistance.
- D. The Acquirer may terminate, in whole or part, any Transition Assistance provisions of the Divestiture Agreement upon commercially reasonable notice and without cost or penalty.

V. Employees

IT IS FURTHER ORDERED that:

- A. Respondents shall cooperate with and assist any proposed Acquirer of the Polyurethane Foam Assets to evaluate independently and offer employment to the Polyurethane Foam Employees relating to each of the Polyurethane Foam Facilities, with such cooperation to include at least the following:
 - 1. Not later than 5 business days after a request from a proposed Acquirer, Respondents shall, to the extent permitted by applicable law:
 - a. Provide to the proposed Acquirer a list of all Polyurethane Foam Employees and provide Employee Information for each; and

- b. Allow the proposed Acquirer a reasonable opportunity to interview any Polyurethane Foam Employees;
 2. Not later than 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the Polyurethane Foam Employees; and
 - b. Make offers of employment to any of the Polyurethane Foam Employees;
 3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the Polyurethane Foam Employees, not offer any incentive to Polyurethane Foam Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any Polyurethane Foam Employees by a proposed Acquirer;
 4. Respondents shall remove any impediments within the control of Respondents that may deter any Polyurethane Foam Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any Polyurethane Foam Employees who receive 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;
 5. Respondents shall provide Polyurethane Foam Employees with reasonable financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Polyurethane Foam Employees by the proposed Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional reasonable incentives as may be necessary.
- B. If, at any point within 6 months of the Divestiture Date, the Commission, in consultation with the Acquirer and the Monitor, determines in its sole discretion that the Acquirer should have the ability to interview, make offers of employment to, or hire any of Respondent Innocor or Respondent FXI's employees that are not otherwise included as Polyurethane Foam Employees, then the Commission may notify Respondents that such employees are to be designated as Polyurethane Foam Employees, and the provisions of this Paragraph V shall apply to such employees as of that notification date.
- C. Respondents shall:
 1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Polyurethane Foam Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

to facilitate the Acquirer's acquisition of the Polyurethane Foam Assets and consistent with the purposes of the Order.

VII. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Respondents, in consultation with the proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
 - 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Polyurethane Foam Business by the Acquirer is not delayed or impaired by the Respondents;
 - 2. Designate employees of Respondents knowledgeable about the operation of the Polyurethane Foam Assets and Polyurethane Foam Business, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Polyurethane Foam Assets and Polyurethane Foam Business;
 - 3. Allow the Acquirer reasonable access to all Business Information related to the Polyurethane Foam Assets and Polyurethane Foam Business and to employees who possess or are able to locate such information; and
 - 4. Establish projected timelines for accomplishing all tasks necessary to effectuate the transition to the Acquirer in an efficient and timely manner.
- B. Respondents shall:
 - 1. Not provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order, the Order to Maintain Assets, or a Divestiture Agreement;
 - 2. Not use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order.

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.

- 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, the Order to Maintain Assets, or any 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, and no less than annually for 3 years 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 VII of this Order, and subject to the Order to Maintain Assets, Respondent may use Confidential Business Information:
 - 1. For the purpose of performing Respondents' obligations under this Order, the Order to Maintain Assets, or the Divestiture Agreements; 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.

VIII. 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"). The Monitor is appointed to

1. The Monitor shall have the power and authority to monitor Respondents' compliance with the divestiture and related requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 3. The Monitor shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of this Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the 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.
- 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 performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations 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, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing

to the Commission concerning performance by Respondents of their obligations under the orders.

- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all ri

Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a

provided, however, that the Commission may extend the period only 2 times.

- c. Subject to any demonstrated legally recognized privilege, any 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 divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- d. Any Divestiture Trustee shall use commercially reasonable 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 divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however,* if any Divestiture Trustee receives bona fide offers for any asset to be divested 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 after receiving notification of the Commission's approval.
- e. Any 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. Any 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. Any Divestiture Trustee shall account for all monies

- f. Respondents shall indemnify any 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,

and notification is required only of Respondents FXI and One Rock Capital and not of any other party to the transaction. Respondents FXI and One Rock Capital 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 FXI and One Rock Capital shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from staff of the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph X 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. Respondent FXI shall:
1. Notify Commission staff via email at bccompliance@ftc.gov of:
 - a. The Acquisition Date, no later than 5 days after the Acquisition Date; and
 - b. The Divestiture Date, no later than 5 days after the Divestiture Date;
 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 FXI and One Rock Capital shall file verified written reports (“compliance reports”) in accordance with the following:
1. Respondents FXI and One Rock Capital shall submit an interim compliance report 30 days after the Order is issued, and additional interim reports every 30 days thereafter until Respondents have fully complied with the provisions of Paragraph II and IV of this Order; 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 set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents

APPENDIX I

Future Foam Divestiture Agreement

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

APPENDIX II

Key Employees

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

APPENDIX III

Excluded Assets

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

APPENDIX IV

APPENDIX IV-1

Monitor Compensation

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