

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

COMMISSIONERS: **Jon Leibowitz, Chairman**
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of
CARDINAL HEALTH, INC.
a corporation.

Docket No. C-4339

DECISION AND ORDER
[Redacted Public Version]

The Federal Trade Commission (“Commission”), having initiated an investigation of the acquisition of certain assets of Biotech by Cardinal Health, Inc. (“Cardinal Health”), and Cardinal Health having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Cardinal Health 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

Cardinal Health, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Cardinal Health of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Cardinal Health 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 Cardinal Health has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the

comments received from an interested person pursuant to Section 2.34 of its Rules, 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 the following Decision and Order (“Order”):

1. Cardinal Health is a corporation organized, existing and doing business under and by virtue of the laws of Ohio with its office and principal place of business located at 7000 Cardinal Health Place, Dublin, OH 43017.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

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

- A. “Cardinal Health” means Cardinal Health, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cardinal Health, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Biotech” means the following entities collectively and individually: Biotech Pharmacy, Inc., a New Mexico corporation, Biotech Pharmacy of Northern Arizona, LLC, an Arizona limited liability company; Biotech Nuclear, LLC, a Nevada limited liability company, Biotech Cyclotron LLC, a Nevada limited liability company, Southwest Cyclotron, LLC, a Nevada limited liability company, Biotech Cyclotron of New Mexico, LLC, a New Mexico limited liability company, Biotech Cyclotron of Arizona, LLC, an Arizona limited liability company, and Biotech Cyclotron of Texas, LLC, a Texas limited liability company, and their respective directors, officers, employees, agents, representatives, successors, and assigns; and their respective joint ventures, subsidiaries, divisions, groups, and affiliates.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” or “Acquirers” means any entity or entities approved by the Commission to acquire one or more of the Reconstituted Pharmacies pursuant to this Order.
- E. “Acquisition” means Cardinal Health’s acquisition of certain Biotech assets relating to Biotech’s Nuclear Pharmacy business, which was consummated on July 31, 2009.
- F. “Biotech Intellectual Property” means the intellectual property related to the Nuclear Pharmacies owned by Biotech prior to the Acquisition and acquired by Cardinal Health pursuant to the Acquisition, including, but not limited to:

1. copyrights, patents, software; trademarks, trade dress, trade secrets, drawings, utility models, designs, design rights, techniques, inventions, practices, recipes, raw material specifications, process descriptions, quality control methods in process, methods and other confidential or proprietary technical, business, development and other information, and all rights in any jurisdiction to limit the use or disclosure thereof;
2. rights to obtain and file for patents and copyrights and registrations thereof;
3. rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation or breach of any of the foregoing; and
4. the exclusive right to all intellectual property acquired by Cardinal Health from Biotech pursuant to the Acquisition and used by Biotech in the Nuclear Pharmacy business prior to the Acquisition, including, but not limited to, patents, licenses, risk analysis, certificates of analysis, goodwill, trade secrets, marketing information, trademarks, trade names, service marks, logos, and the modifications or improvements to such intellectual property.

PROVIDED, HOWEVER, that Intellectual Property shall not include intellectual property relating solely to the Cyclotron Assets.

- G. “Common Intellectual Property” means the intellectual property related to the Nuclear Pharmacies owned by Biotech prior to the Acquisition and acquired by Cardinal Health pursuant to the Acquisition, including but not limited to know-how, technology, data, technical information, protocols (including, but not limited to, operational manuals and standard operating procedures), and quality control information.
- H. “Biotech Nuclear Pharmacy” means any and all of the Nuclear Pharmacies owned and operated by Biotech as of July 30, 2009, and located at:

3940 S. Eastern Avenue, Las Vegas, Nevada 89119
4030 Stockton Hill Road, Suite 8, Kingman, Arizona 86409
116 W. Castellano, El Paso, Texas 79912
4376 Alexander Boulevard, NE, Suite B, Albuquerque, New Mexico 87107

- I. “Branded Heart Perfusion Agent” means Cardiolite or Myoview.
- J. “Closing Date” means the Albuquerque Closing Date, the El Paso Closing Date, or the Las Vegas Closing Date.
- K. “Albuquerque Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in Albuquerque, New Mexico to an Acquirer pursuant to this Order.

- L. “El Paso Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in El Paso, Texas to an Acquirer pursuant to this Order.
- M. “Las Vegas Closing Date” means the date on which Cardinal Health (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey a Reconstituted Pharmacy located in Las Vegas, Nevada, to an Acquirer pursuant to this Order.
- N. “Customer” means any third party that, at any time between July 1, 2009 and the relevant Closing Date, purchased Radiopharmaceuticals from any of the Former Cardinal Nuclear Pharmacies or the Biotech Nuclear Pharmacies located in Las Vegas, Nevada, El Paso, Texas, and Albuquerque, New Mexico acquired by Cardinal Health in the Acquisition.
- O. “Customer Contract” means any contract between Cardinal Health and any Customer for the preparation, dispensing and distribution of Radiopharmaceuticals, including, but not limited to, contracts with the Customers identified in Confidential Exhibit A to this Order.

PROVIDED, HOWEVER, Customer Contract shall not include any contract solely for the preparation, dispensing and distribution of High-energy Radiopharmaceuticals or where the Customer has committed to purchase only High-energy Radiopharmaceuticals.

- P. “Existing Customer Contract” means the Customer Contract in effect on the date that Cardinal Health notifies the relevant Customer of its contract termination rights pursuant to Paragraph IV of this Order.
- Q. “Cyclotron Assets” means the equipment and other assets associated with the manufacture of High-energy Radiopharmaceuticals.
- R. “Designated Employee” means the employee or person employed by Biotech at any Biotech Nuclear Pharmacy or by Cardinal at any of the Former Cardinal Health Nuclear Pharmacies at the time of the Acquisition.

PROVIDED, HOWEVER, “Designated Employee” does not include the persons identified in Confidential Exhibit B.

- S. “Albuquerque Divestiture Agreement” means the agreement between Cardinal Health and the Acquirer of the Reconstituted Nuclear Pharmacy located in Albuquerque, New Mexico.
- T. “El Paso Divestiture Agreement” means the agreement between Cardinal Health and the Acquirer of the Reconstituted Nuclear Pharmacy located in El Paso, Texas.

- U. “Las Vegas Divestiture Agreement” means the agreement between Cardinal Health and the Acquirer of the Reconstituted Nuclear Pharmacy located in Las Vegas, Nevada.
- V. “Divestiture Trustee(s)” means any person or entity appointed pursuant to Paragraph VIII of this Order to act as a trustee in this matter.
- W. “Former Cardinal Health Nuclear Pharmacies” means the Nuclear Pharmacies owned and operated by Cardinal Health as of July 30, 2009, at the following locations:

61 Spectrum Boulevard, Las Vegas, Nevada 89119;
1020 Tijeras N.E., Suite 1, Albuquerque, New Mexico 87107;
1810 Murchison Road, #205, El Paso, Texas 79902.

- X. “Generic Heart Perfusion Agent” means Sestamibi.
 - Y. “High-energy Radiopharmaceuticals” means any positron emission tomography (PET) Radiopharmaceutical.
 - Z. “Low-energy Radiopharmaceuticals” means any non-PET Radiopharmaceutical, which is or can be used in diagnostic nuclear medicine studies, diagnostic nuclear medicine imaging or therapeutic nuclear medicine treatments.
- AA. “Monitor” means the person appointed pursuant to Paragraph VII of this Order.
 - BB. “Nuclear Pharmacy” means a pharmacy dedicated to the preparation, dispensing, and distribution of Radiopharmaceuticals.

PROVIDED, HOWEVER, “Nuclear Pharmacy” shall not include Cyclotron Assets.

- CC. “Person” means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiaries, divisions, groups or affiliates thereof.
- DD. “Radiopharmaceutical” means a drug containing a radioactive isotope which can be used in diagnostic nuclear medicine studies, diagnostic nuclear medicine imaging, therapeutic nuclear medicine treatments, or diagnostic molecular imaging.
- EE. “Reconstituted Pharmacies” means the Former Cardinal Health Nuclear Pharmacies as reconstituted pursuant to Paragraph II.A.1. of this Order.
- FF. “Relevant Areas” means the area within a 200 mile radius of each of the Biotech Nuclear Pharmacies.
- GG. “Tech-99” means technetium-99m.

HH. “Third Party Consents” means all consents from any person other than Cardinal Health, including all landlords, that are necessary to effect the complete transfer of the Reconstituted Pharmacies to an Acquirer.

II.

IT IS FURTHER ORDERED that:

- A. Within six (6) months of the date on which this Order is accepted for public comment, Cardinal Health shall:
 1. Reconstitute, in conjunction with each proposed Acquirer, each of the Former Cardinal Health Nuclear Pharmacies. Such reconstitution shall result in the creation of separate, stand-alone Nuclear Pharmacies, similar to the Former Cardinal Health Nuclear Pharmacies before the Acquisition, and each fully engaged in all aspects of the Nuclear Pharmacy business and compliant with USP 797 regulation developed by U.S. Pharmacopeia. Such reconstitution may include, but is not limited to, returning or replacing all equipment, supplies, fixtures, and furnishings.
 2. Divest the Reconstituted Pharmacies and the Biotech Intellectual Property, absolutely and in good faith, at no minimum price, to an Acquirer or Acquirers each of whom receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission.

PROVIDED, HOWEVER, that Cardinal Health may retain a fully paid-up, irrevocable, royalty-free license to the Common Intellectual Property;

PROVIDED FURTHER, HOWEVER, that Cardinal shall demonstrate that the Acquirer of each Reconstituted Pharmacy shall have a contract for the supply of Tech-99, independent of Cardinal Health, with a capability to obtain a volume of Tech-99 similar to the volume of Tech-99 previously provided to the Biotech Nuclear Pharmacies before the Acquisition;

PROVIDED FURTHER, HOWEVER, that Cardinal shall demonstrate that the Acquirer of each Reconstituted Pharmacy shall have distribution rights with respect to both a Branded Heart Perfusion Agent and a Generic Heart Perfusion Agent, for, at a minimum, the area previously serviced by the corresponding Biotech Nuclear Pharmacy before the Acquisition.

- B. Cardinal Health shall not prevent, restrict, limit, or interfere in any way with the ability of an Acquirer to procure or distribute any Radiopharmaceutical product or Radiopharmaceutical input, including, but not limited to, Branded Heart Perfusion Agents and Generic Heart Perfusion Agents.

- C. Before the Closing Date for each Reconstituted Pharmacy, Cardinal Health shall:
1. obtain or maintain all regulatory approvals, licenses, qualifications, permits or clearances that are capable of being transferred to the Acquirer and necessary for any aspect of the operations of such Reconstituted Pharmacy, to the extent allowed by law; and
 2. transfer such approvals, licenses, permits or clearances to each Acquirer, to the extent they can be transferred.
- D. The purposes of this Paragraph II of the Order are:
1. to ensure that Cardinal Health, in conjunction with the proposed Acquirer or Acquirers, reconstitutes the Former Cardinal Health Nuclear Pharmacies in Las Vegas, Nevada; Albuquerque, New Mexico; and El Paso, Texas resulting in the creation of separate, stand-alone Nuclear Pharmacies, and each fully engaged in all aspects of the Nuclear Pharmacy business;
 2. to ensure that each Acquirer of the Reconstituted Pharmacies has the intention and ability to prepare and distribute Radiopharmaceuticals for use in nuclear medicine procedures, at facilities independent of Cardinal Health, similar to Cardinal Health's independent preparation and distribution of Radiopharmaceuticals prior to Cardinal Health's acquisition of Biotech, including having a Tech-99 supply agreement and distribution agreements with respect to a Branded Heart Perfusion Agent and a Generic Heart Perfusion Agent that could be used to supply customers of the Reconstituted Pharmacy;
 3. to allow each Acquirer to operate the Reconstituted Pharmacies with the certifications and approvals necessary for the preparation, distribution, and pharmacology of Radiopharmaceuticals; and
 4. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

- A. Cardinal Health shall take no action to prevent, restrict, limit, or interfere in any way with the ability of each Acquirer to contract with any group purchasing organization.

PROVIDED, HOWEVER, Cardinal Health shall not be required to terminate, amend or waive any contracts entered into with group purchasing organizations

unless Cardinal Health is otherwise required to terminate, amend, or waive such contracts, or portions thereof, pursuant to Paragraph IV of this Order.

- B. Cardinal Health shall, as part of the Divestiture Agreement for the Reconstituted Pharmacies in Las Vegas, NV and Albuquerque, NM, and at the Acquirer's option for those Reconstituted Pharmacies, enter into an agreement to supply F-18 fluorodeoxyglucose and other cyclotron-produced radioisotopes from Cardinal Health to the Acquirer for a period of one (1) year after the Closing Date on price terms similar to those in the contracts through which Biotech agreed to provide such radioisotopes to Cardinal Health prior to the Acquisition.

IV.

IT IS FURTHER ORDERED that:

- A. Cardinal Health shall, within five (5) days after each Closing Date, notify each relevant Customer of its right to terminate its Existing Customer Contract with Cardinal Health.
- B. Cardinal Health shall terminate the Existing Customer Contract within thirty (30) days of receiving a Customer's request to terminate. The Customer's right to terminate such Existing Customer Contract shall be without penalty or charge, and immediately upon request of the Customer, and shall continue for twenty-four (24) months from the relevant Closing Date. Such notification shall include notification of the existence of the relevant Reconstituted Pharmacy and be in the form of the notification attached as Exhibit C to this Order.

PROVIDED, HOWEVER, that, if after receiving such notification, the Existing Customer Contract is extended, renewed, or materially modified by mutual agreement between Cardinal Health and the Customer, including, but not limited to, modifications regarding the price or duration terms of such Existing Customer Contract, Cardinal Health shall not be required to terminate the Existing Customer Contract pursuant to this Paragraph;

PROVIDED FURTHER HOWEVER, that Cardinal Health shall include in any such extension, renewal, or material modification to such Existing Customer Contract a specific and prominent acknowledgment that if the Customer executes the extension, renewal, or material modification, Cardinal Health will not be required to terminate the Existing Customer Contract pursuant to this Paragraph.

V.

IT IS FURTHER ORDERED that:

- A. Each Divestiture Agreement, if approved by the Commission, shall be incorporated by reference into this Order and made a part hereof. Further, nothing in any Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of an Acquirer or to reduce any obligations of Cardinal Health under a Divestiture Agreement. Cardinal Health shall comply with the terms of each Divestiture Agreement, and a breach by Cardinal Health of any term of a Divestiture Agreement shall constitute a violation of this Order. To the extent that any term of a Divestiture Agreement conflicts with a term of this Order such that Cardinal Health cannot fully comply with both, Cardinal Health shall comply with the term of this Order; and
- B. Cardinal Health shall include in each Divestiture Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of Cardinal Health's obligations to the Acquirer pursuant to this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Beginning from the Closing Date for each Reconstituted Pharmacy until ninety (90) days after such Closing Date, Cardinal Health shall:
 1. facilitate employment interviews between each Designated Employee and the Acquirer of each Reconstituted Pharmacy, including providing the names and contact information for such employees and allowing such employees reasonable opportunity to interview with the relevant Acquirer, and shall not discourage such employee from participating in such interviews;
 2. not interfere in employment negotiations between each Designated Employee and the relevant Acquirer;
 3. with respect to each Designated Employee who receives an offer of employment from the relevant Acquirer:
 - a. not prevent, prohibit, or restrict, or threaten to prevent, prohibit, or restrict the Designated Employee from being employed by the relevant Acquirer, and shall not offer any incentive to the Designated Employee to decline employment with the relevant Acquirer;

- b. cooperate with the relevant Acquirer in effecting transfer of the Designated Employee to the employ of the relevant Acquirer, if the Designated Employee accepts an offer of employment from the relevant Acquirer;
- c. eliminate any contractual provisions or other restrictions entered into or imposed by Cardinal Health (such as noncompetition agreements) that would otherwise prevent the Designated Employee from being employed by the relevant Acquirer;
- d. eliminate any confidentiality restrictions that would prevent the Designated Employee who accepts employment with the Acquirer from using or transferring to the relevant Acquirer any information relating to the operation of the relevant Reconstituted Pharmacy; and
- e. unless alternative arrangements are agreed upon with the relevant Acquirer, retain the obligation for the benefit of any Designated Employee who accepts employment with the relevant Acquirer, to pay all vested bonuses, vested pensions, and other vested benefits.

B. Cardinal Health shall not, for a period of two (2) years following each relevant Closing Date, directly or indirectly, solicit, induce, or attempt to solicit or induce any Person employed by the relevant Acquirer at the relevant Reconstituted Pharmacy to terminate his or her employment relationship with such Acquirer, unless that employment relationship has already been terminated by such Acquirer;

PROVIDED, HOWEVER, that Cardinal Health may make general advertisements for employees including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the relevant Acquirer's employees;

PROVIDED FURTHER, HOWEVER, Cardinal Health may hire Designated Employees who apply for employment with Cardinal Health as long as such employees were not solicited by Cardinal Health in violation of this Paragraph.

VII.

IT IS FURTHER ORDERED that:

- A. Katherine L. Seifert of Seifert and Associates, Inc. shall serve as the Monitor pursuant to the agreement executed by the Monitor and Cardinal Health and attached as Exhibits D ("Monitor Agreement") and Confidential Exhibit D-1 (Monitor compensation). The Monitor is appointed to assure that Cardinal Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. The Monitor Agreement shall require that, no later than one (1) day after this Order is accepted for public comment, Cardinal Health transfers to the Monitor all rights, powers,

and authorities necessary to permit the Monitor to perform her duties and responsibilities, pursuant to and consistent with, the purposes of the Order.

- C. No later than one (1) day after this Order is accepted for public comment, Cardinal Health shall, pursuant to the Monitor Agreement, transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform her duties and responsibilities, pursuant to and consistent with, the purposes of the Order.
- D. Cardinal Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
 1. The Monitor shall have the power and authority to monitor Cardinal Health's compliance with the terms of the Order, 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 Order and in consultation with the Commission including, but not limited to:
 - a. Assuring that Cardinal Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by this Order; and
 - b. Monitoring any agreements between Cardinal Health and the Acquirer.
 2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission.
 3. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Cardinal Health's personnel, books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Cardinal Health's compliance with its obligations under the Order. Cardinal Health 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 Cardinal Health's compliance with the Order.
 4. The Monitor shall serve, without bond or other security, at the expense of Cardinal Health on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have authority to employ, at the expense of Cardinal Health, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.
 5. Cardinal Health 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, malfeasance, willful or wanton acts, or bad faith by the Monitor.

6. The Monitor Agreement shall provide that within one (1) month from the date the Monitor is appointed pursuant to this paragraph, and every sixty (60) days thereafter, the Monitor shall report in writing to the Commission concerning performance by Cardinal Health of its obligations under the Order.
 7. Cardinal Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *PROVIDED, HOWEVER*, such agreement shall not restrict the Monitor from providing any information to the Commission.
- E. The Commission may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. 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 Cardinal Health, which consent shall not be unreasonably withheld. If Cardinal Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by the staff of the Commission to Cardinal Health of the identity of any proposed Monitor, Cardinal Health shall be deemed to have consented to the selection of the proposed Monitor.
 2. Not later than ten (10) days after appointment of the substitute Monitor, Cardinal Health shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Cardinal Health's compliance with the relevant terms of the Order in a manner consistent with the purposes of the Order.
- G. 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 Order.
- H. A Monitor appointed pursuant to this Order may be the same person appointed as the Divestiture Trustee pursuant to the relevant provisions of this Order.

VIII.

IT IS FURTHER ORDERED that:

- A. If Cardinal Health has not fully complied with the obligations as required by Paragraphs II.A, II.B and II.C of this Order, the Commission may appoint a Divestiture Trustee to reconstitute the Former Cardinal Health Nuclear Pharmacies and divest the Reconstituted Pharmacies and enter into other agreements, assignments, and licenses, in a manner that satisfies the requirements of this Order.
- 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, Cardinal Health shall consent to the appointment of a Divestiture Trustee in such action to effectuate the divestitures and other obligations as described in Paragraphs II.A, II.B and II.C. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VIII 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 Cardinal Health to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Cardinal Health, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Cardinal Health has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Cardinal Health of the identity of any proposed Divestiture Trustee, Cardinal Health shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Not later than ten (10) days after the appointment of a Divestiture Trustee, Cardinal Health 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 divestitures required by this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph VIII, Cardinal Health 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 reconstitute the Former Cardinal Health Nuclear Pharmacies and divest the Reconstituted Pharmacies and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and VI of this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to reconstitute the Former Cardinal Health Nuclear Pharmacies, and to divest the Reconstituted Pharmacies and enter into all agreements, licenses and assignments as described in Paragraphs II, III, and VI of this Order, absolutely and in good faith, at no minimum price, to one or more acquirers that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission. If, however, at the end of the one (1) year 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 or periods may be extended by the Commission; *PROVIDED, HOWEVER,* the Commission may extend the divestiture period only two (2) times.
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 divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Cardinal Health shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Cardinal Health shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Cardinal Health shall extend the time for divestiture under this Paragraph VIII in an amount equal to the delay, as determined by the Commission.
4. The Divestiture Trustee shall use best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Cardinal Health's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an acquirer as required by this Order;

PROVIDED, HOWEVER, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity for assets and businesses to be divested pursuant to Paragraph II, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Cardinal Health from among those approved by the Commission;

PROVIDED FURTHER, HOWEVER, that Cardinal Health shall select such entity within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Cardinal Health, 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 Cardinal Health, 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 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 Cardinal Health, 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. Cardinal Health 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, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 8. The Divestiture Trustee shall act in a fiduciary capacity for the benefit of the Commission.
 9. The Divestiture Trustee shall report in writing to Cardinal Health and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
 10. Cardinal Health 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.
 11. 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 an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- F. 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 VIII.
- G. 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 obligations under Paragraphs II, III, IV, and VI of this Order.

- H. The Divestiture Trustee(s) appointed pursuant to Paragraph VIII of this Order may be the same Person appointed as the Monitor pursuant to Paragraph VII of this Order.

IX.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final:

- A. Cardinal Health shall not, without providing advance written notice to the Commission, acquire, directly or indirectly, any assets divested pursuant to this Order. Said notification shall be given to the Secretary of the Federal Trade Commission.
- B. Cardinal Health shall not, without providing advance written notification to the Commission in the manner described in this Paragraph IX directly or indirectly, acquire:
 1. any stock, share capital, equity, or other interest in any Person, corporate or non-corporate, that owns, operates, manages, or owns an interest in Nuclear Pharmacies in the Relevant Areas; or
 2. any assets used, at the time of the Acquisition, in the operation or business of Nuclear Pharmacies in the Relevant Areas.

Said notification shall be given to the Secretary of the Federal Trade Commission and shall include, at a minimum, the following information: (i) the name and address of the acquired entity or, in the case of an asset acquisition the name and address of the entity from which assets are being acquired; (ii) a description of the transaction, including the purchase price; and (iii) identification of the assets being acquired, including their physical location.

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.

PROVIDED, FURTHER, HOWEVER, that prior notification shall not be required by this Paragraph IX for an acquisition, if Cardinal Health acquires not more than one percent of the outstanding securities or other equity interest in an entity described in this Paragraph IX.

X.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order is accepted for public comment, and every sixty (60) days thereafter until Cardinal Health has fully complied with Paragraphs II.A, II.B, II.C, IV.A and VI.A of this Order, Cardinal Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Cardinal Health shall submit at the same time a copy of its report concerning compliance with this Order to the Monitor or Divestiture Trustee, if any Divestiture Trustee has been appointed pursuant to this Order. Cardinal Health shall include in its report, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant Paragraphs of the Order, including a description of all substantive contacts or negotiations related to the divestiture of the relevant assets and the identity of all parties contacted. Cardinal Health shall include in its report copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations.
- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, Cardinal Health shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied, is complying, and will comply with this Order. Cardinal Health shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with the Order and copies of all written communications to and from all persons relating to this Order. Additionally, Cardinal Health shall include in its compliance report whether or not it made any notifiable acquisitions pursuant to Paragraph IX. Cardinal Health shall include a description of such acquisitions including, but not limited to, the identity of the Person or assets acquired, the location of the Person or assets, and a detailed description of the assets or Person and its Nuclear Pharmacy operations.

XI.

IT IS FURTHER ORDERED that Cardinal Health shall notify the Commission at least thirty (30) days prior to any proposed:

- A. dissolution of Cardinal Health;
- B. acquisition, merger or consolidation of Cardinal Health; or
- C. other change in Cardinal Health, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to Cardinal Health, Cardinal Health shall, without restraint or interference, permit any duly authorized representative(s) of the Commission:

- A. access, during business office hours of Cardinal Health 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 Cardinal Health related to compliance with this Order, which copying services shall be provided by Cardinal Health at its expense; and
- B. to interview officers, directors, or employees of Cardinal Health, who may have counsel present, regarding such matters.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on October 18, 2021.

By the Commission.

Donald S. Clark
Secretary

SEAL

ISSUED: October 18, 2011

Confidential Exhibit A

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

Confidential Exhibit B

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