

MONITOR AGREEMENT

This MONITOR AGREEMENT (“Agreement”) entered into by and between The Sherwin-Williams Company (“SW”), The Valspar Corporation (“Valspar”) (collectively, “Respondents”) and Analysis Group, Inc., including Rebecca Kirk Fair (“Monitor”) provides as follows:

PRELIMINARY STATEMENT

WHEREAS, the United States Federal Trade Commission (the “Commission”) has accepted or will shortly accept for Public Comment an Agreement Containing Consent Orders (“Consent Agreement”) incorporating a Decision and Order (“Decision and Order”), which, among other things, requires Respondents to divest the Industrial Wood Coatings Business and grant a Shared Intellectual Property License, as defined in the Decision and Order, and contemplates the appointment of a Monitor to monitor Respondents’ compliance with its obligations under the Decision and Order:

WHEREAS, the Commission has appointed Rebecca Kirk Fair of Analysis Group, Inc. as Monitor pursuant to the Decision and Order, and Rebecca Kirk Fair has consented to such appointment;

WHEREAS, the Decision and Order further provides that Respondents shall execute an agreement, subject to the prior approval of the Commission, that confers all the rights and powers necessary to permit the Monitor to monitor Respondents’ compliance with the terms of the Decision and Order as described in more detail in this Agreement; and

WHEREAS, the parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Decision and Order.

ARTICLE I

1.1 Monitor's Areas of Responsibilities. The Monitor shall be responsible for monitoring Respondents’ compliance with the Decision and Order and the Divestiture Agreement, as defined in the Decision and Order (together, the “Monitor’s Areas of Responsibilities”). The Monitor understands that in carrying out its responsibilities, it shall act in a fiduciary capacity for the benefit of the Commission.

1.2 Access to Relevant Information and Facilities. The Monitor shall have full and complete access to the personnel, facilities, books, and records of Respondents related to Respondents’ obligations under the Decision and Order and Divestiture Agreements, as the Monitor may reasonably request. Respondents shall cooperate with any reasonable request of

the Monitor. The Monitor shall give Respondents reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with Respondents' operations. At the request of the Monitor, Respondents shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of Respondents who have knowledge relevant to the proper discharge of Monitor's responsibilities under the Decision and Order.

1.3 Compliance Reports. Respondents shall provide the Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) days after the date on which Respondents file such report with the Commission;

1.4 Monitor's Obligations. The Monitor shall:

- a. carry out the Monitor's duties and responsibilities within the Monitor's Areas of Responsibilities, including submission of periodic reports, and such additional written reports as may be requested by the Commission staff, to the Commission staff regarding Respondents' compliance with the Decision and Order;
- b. maintain the confidentiality of all confidential information, including Confidential Business Information, and any other information provided to the Monitor by Respondents, the Acquirer of the Industrial Wood Coatings Business, any supplier or customer of Respondents or the Industrial Wood Coatings Business, or the Commission, and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. The Monitor may disclose confidential information only to:
 - i. persons employed by or working with the Monitor under this Agreement; and
 - ii. persons employed at the Commission.
- c. require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by the Monitor to assist in carrying out the duties and responsibilities of the Monitor to execute a confidentiality agreement, which Respondents will provide if requested, that requires such third parties to treat confidential or proprietary information, including Confidential Business Information, with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;
- d. maintain the confidentiality, for a period of five (5) years after the termination of this Agreement, of all other aspects of the performance of its duties under this Agreement and shall not disclose any confidential or proprietary

information, including Confidential Business Information, relating thereto;
and

- e. upon the termination of the Monitor's duties under this Agreement, promptly destroy all written and electronic materials (both originals and copies) that relate to the performance of the Monitor's responsibilities under this Agreement.

1.5 Monitor Payment. SW will pay the Monitor its standard hourly fee (“Hourly Fee”) for all reasonable time spent in performance of the Monitor's duties under this Agreement. Rebecca Kirk Fair’s current hourly fee is [REDACTED]. In addition, SW will pay: (a) out-of-pocket expenses reasonably incurred by the Monitor in the performance of the Monitor's duties; and (b) fees and disbursements reasonably incurred by such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor’s duties and responsibilities hereunder; however, all such out-of-pocket expenses and fees and disbursements shall be pre-approved by SW, which shall not withhold approval unreasonably. The Monitor shall invoice SW on a monthly basis, within seven (7) days of the conclusion of the month, including details and an explanation of all matters for which the Monitor submits an invoice to SW. SW shall pay such invoices within 30 days of receipt. Any consultants, accountants, attorneys, and other representatives and assistants retained by the Monitor shall invoice their services to the Monitor who will review and approve such invoices and submit to SW for payment. At its own expense, SW may retain an independent auditor to verify such invoices. The Monitor and SW shall submit any disputes about invoices to the Commission for assistance in resolving such disputes.

1.6 Monitor’s Indemnification. Respondents shall be liable to indemnify and hold harmless the Monitor against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor’s duties hereunder, 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 liabilities, losses, damages, claims, or expenses result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.

1.7 Disputes. In the event of a disagreement or dispute between Respondents and the Monitor concerning Respondents’ obligations under the Decision and Order, and, in the event that such disagreement or dispute cannot be resolved by the parties, either party may seek the assistance of the individual in charge of the Commission’s Compliance Division.

1.8 Conflicts of Interest. If the Monitor becomes aware during the term of this Agreement that he has or may have a conflict of interest that may affect or could have the appearance of affecting performance by the Monitor of any of her duties under this Agreement, the Monitor shall promptly inform Respondents and the Commission of any such conflict.

ARTICLE II

2.1 Termination. This Agreement shall terminate upon the later of: (i) five years after the Divestiture date; or (ii) the termination of all Respondents' obligations under the Supply Agreement, the Toll Manufacturing Agreement, and the Transition Services Agreements; *provided however*, the Commission may extend or modify this period as may be necessary. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute monitor. Respondents' receipt of written notice from the Commission that the Commission has determined that Rebecca Kirk Fair has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor, shall constitute termination under this Agreement. If this Agreement is terminated for any reason, the confidentiality obligations set forth in Section 1.4 above will remain in force.

2.2 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive laws of the State of Ohio, including all matters of construction, validity and performance. The Decision and Order shall govern this Agreement and any provisions herein which conflict or are inconsistent with it may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

2.3 Disclosure of Information. Nothing in this Agreement shall require Respondents to disclose any material information that is subject to a legally recognized privilege or that Respondents are prohibited from disclosing by reason of law or an agreement with a third party.

2.4 Assignment. This Agreement may not be assigned or otherwise transferred by Respondents or the Monitor without the consent of Respondents and the Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Decision and Order.

2.5 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Decision and Order.

2.6 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission.

2.7 Entire Agreement. This Agreement, and those portions of the Decision and Order incorporated herein by reference, constitute the entire agreement of the parties and supersede any and all prior agreements and understandings between the parties, written or oral, with respect to the subject matter hereof.

2.8 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

2.9 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR

BY: Rebecca Kirk Fair

NAME: ANALYSIS GROUP, INC.
REBECCA KIRK FAIR

RESPONDENT

THE SHERWIN-WILLIAMS COMPANY

BY: Jane M. Cronin

NAME: Jane M. Cronin

TITLE: Sr VP Corp. Controller

RESPONDENT

THE VALSPAR CORPORATION

BY: _____

NAME: _____

TITLE: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

MONITOR

BY: _____

NAME: ANALYSIS GROUP, INC.
REBECCA KIRK FAIR

RESPONDENT

THE SHERWIN-WILLIAMS COMPANY

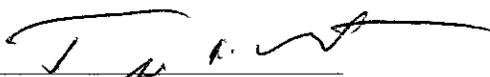
BY: _____

NAME: _____

TITLE: _____

RESPONDENT

THE VALSPAR CORPORATION

BY:  _____

NAME: Tyler N. Tract

TITLE: Vice President of Operations