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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Maureen K. Ohlhausen, Acting Chairman**
Terrell McSweeny

In the Matter of	)	
THE SHERWIN-WILLIAMS COMPANY, a corporation,	)	
and	)	**Docket No. C-4621**
THE VALSPAR CORPORATION, a corporation.	)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent The Sherwin-Williams Company ("SW") of the voting securities of Respondent The Valspar Corporation ("Valspar"), collectively "Respondents," and Respondents having been furnished thereafter with a copy of a draft of the Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents 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

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of the Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents 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 Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint, 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, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent The Sherwin-Williams Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Ohio with its executive offices and principal place of business located at 101 Prospect Avenue NW, Cleveland, Ohio 44115.

2. Respondent The Valspar Corporation is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 1101 South Third Street, Minneapolis, Minnesota 55415.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

ORDER

I.

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

A. "SW" means The Sherwin-Williams Company, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by The Sherwin-Williams Company, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. SW includes Valspar, after the Acquisition Date.

B. "Valspar" means The Valspar Corporation, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates in each case controlled by The Valspar Corporation, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Respondents" means SW and Valspar, individually and collectively.

D. "Commission" means the Federal Trade Commission.

E. "Acquirer" means:

1. Axalta; or

2. Any other Person approved by the Commission to acquire the Industrial Wood Coatings Business pursuant to this Decision and Order.

F. "Acquisition" means the proposed acquisition by Respondent SW of all the voting securities of Respondent Valspar described in the Agreement and Plan of Merger, dated as of March 19, 2016, among The Sherwin-Williams Company, Viking Merger Sub, Inc., a wholly owned subsidiary of SW, and The Valspar Corporation, and any amendments, exhibits, or schedules attached thereto.

G. "Acquisition Date" means the date the Acquisition is consummated.

H. "Axalta" means Axalta Coating Systems Ltd., an exempted company organized, existing, and doing business under, and by virtue of, the laws of Bermuda with its office and principal executive offices located at 2001 Market Street, Philadelphia, Pennsylvania 19103.

I. "Business Records" means all originals and all copies of any operating, financial or other information, documents, data, computer files (including files stored on a computer's hard drive or other storage media), electronic files, books, records, ledgers, papers, instruments, and other materials, whether located, stored, or maintained in traditional paper format or by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media, including, without limitation: distributor files and records; customer files and records, customer lists, customer product specifications, customer purchasing histories, customer service and support materials, customer approvals, and other information; credit records and information; correspondence; referral sources; supplier and vendor files and lists; advertising, promotional, and marketing materials, including website content; sales materials; research and development data, files, and reports; technical information; data bases; studies; designs, drawings, specifications and creative materials; production records and reports; service and warranty records; equipment logs; operating guides and manuals; employee and personnel records; education materials; financial and accounting records; and other documents, information, and files of any kind.

J. "Cornwall Facility" means the industrial wood coatings facility located at 1915 Second Street West, Cornwall, Ontario Canada K6H 5R6.

K. "Confidential Business Information" means information owned by, or in the possession or control of, Respondent Valspar that is not in the public domain and that is directly related to the conduct of the Industrial Wood Coatings Business. The term "Confidential Business Information" *excludes* the following:

1. Information that is contained in documents, records, or books of Respondent Valspar that is provided to an Acquirer that is unrelated to the Industrial Wood Coatings Business acquired by the Acquirer or that is exclusively related to the Retained Business;

2. Information that Respondent Valspar can demonstrate to the satisfaction of the Commission, in the Commission's sole discretion:

    a. Was or becomes generally available to the public other than as a result of disclosure by Respondent Valspar;

    b. Is necessary to be included in Respondent Valspar's mandatory regulatory filings; *provided, however,* that Respondent Valspar shall make all reasonable efforts to maintain the confidentiality of such information in the regulatory filings;

    c. Was available, or becomes available, to Respondent SW on a non-confidential basis, but only if, to the knowledge of Respondent SW, the source of such information is not in breach of a contractual, legal, fiduciary, or other obligation to maintain the confidentiality of the information;

    d. Was independently developed by Respondent without reference to Confidential Business Information;

    e. Is information the disclosure of which is consented to by the Acquirer;

    f. Is necessary to be exchanged in the course of consummating the Acquisition or the transaction under the Divestiture Agreement or any Remedial Agreement;

    g. Is disclosed in complying with the Order;

    h. Is information the disclosure of which is necessary to allow Respondents to comply with the requirements and obligations of the laws of the United States and other countries, and decisions of Government Entities; or

    i. Is disclosed in obtaining legal advice.

L. "Copyrights" means rights to all original works of authorship of any kind and any registrations and applications for registrations thereof, and all copyrightable works, registered and unregistered copyrights in both published works and unpublished works, and all applications, registrations, and renewals in connection therewith.

M. "Direct Cost" means a cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide the relevant assistance or service.

N. "Divestiture Agreement" means:

1. the Asset Purchase Agreement by and among The Valspar Corporation, Axalta Coating Systems Ltd., and The Sherwin-Williams Company, dated April 11, 2017, and all amendments, exhibits, attachments, agreements, and schedules thereto, attached to this Order as Non-Public Appendix A; or

2. any agreement that receives the prior approval of the Commission between Respondents (or between a Divestiture Trustee appointed pursuant to Paragraph IV. of this Order) and an Acquirer to purchase the Industrial Wood Coatings Business, and all amendments, exhibits, attachments, agreements, and schedules thereto that have been approved by the Commission.

O. "Divestiture Date" means the date on which Respondents (or a Divestiture Trustee) close on the divestiture of the Industrial Wood Coatings Business as required by Paragraph II (or Paragraph IV) of this Order.

P. "Employee Access Period" means one (1) year from the Divestiture Date.

Q. "Geographic Territory" means the United States of America, Canada, and Mexico.

R. "Government Entities" means any Federal, state, local, or non-U.S. government, or any court, legislature, government agency, or government commission, or any judicial or regulatory authority of any government.

S. "High Point 1647 English Facility" means the industrial wood coatings facility located at 1647 English Road, High Point, North Carolina 27262.

T. "High Point 1717 English Facility" means the industrial wood coatings facility located at 1717 English Road, High Point, North Carolina 27262.

U. "High Point 1908 S Elm Facility" means the industrial wood coatings leased warehouse facility located at 1908 South Elm Street, High Point, North Carolina 27260.

V. "High Point 2137 Brevard Facility" means the industrial wood coatings facility located at 2137 Brevard Road, High Point, North Carolina 27263.

W. "Industrial Wood Coatings Business" means all of Respondent Valspar's rights, title, and interest in and to all assets primarily related to the operation or conduct of Respondent Valspar's business of designing, developing, manufacturing, marketing, servicing, distributing and selling of Industrial Wood Coatings Products in the Geographic Territory, wherever located, and all improvements and additions thereto, as of the Divestiture Date, including, but not limited to:

1. The Industrial Wood Coatings Facilities;

2. The Industrial Wood Coatings Research and Development Assets;

3. The Industrial Wood Coatings Color Studio Assets;

4. The Industrial Wood Coatings Contracts;

5. The Industrial Wood Coatings Intellectual Property;

6. The Tangible Personal Property;

7. All inventories primarily relating to the Industrial Wood Coatings Products, both finished goods and inputs affiliated with an Industrial Wood Coatings Facility, wherever located;

8. All consents, licenses, certificates, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement relating to the research, development, manufacture, distribution, marketing, or sale of Industrial Wood Coatings Products, and all pending applications therefor or renewals thereof, to the extent legally transferable; and

9. All Business Records relating to the research, development, manufacture, distribution, marketing, or sale of Industrial Wood Coatings Products; *provided, however,* that where documents or other materials included in the Business Records to be divested contain information: (a) that relates both to the Industrial Wood Coatings Business to be divested and to the Retained Business or other products or businesses and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Industrial Wood Coatings Business to be divested; or (b) for which the relevant party has a legal obligation to retain the original copies, the relevant party shall be required to provide only copies or relevant excerpts of the documents and materials containing this information, and Respondents may keep such records and provide copies with appropriate redactions to the Acquirer. In instances where such copies are provided to the Acquirer, the relevant party shall provide the Acquirer access to original documents under circumstances where copies of the documents are insufficient for evidentiary or regulatory purposes.

X. "Industrial Wood Coatings Color Studio Assets" means all assets, including, but not limited to, research and development equipment, located at the Los Angeles, California Color Studio of Respondent Valspar and used exclusively or primarily by any Industrial Wood Coatings Employee.

Y. "Industrial Wood Coatings Contracts" means all agreements and contracts with customers, suppliers, vendors, representatives, agents, licensees, and licensors; and all leases, mortgages, notes, bonds, and other binding commitments, whether written or oral, and all rights thereunder and related thereto related primarily to the Industrial Wood Coatings Business.

Z. "Industrial Wood Coatings Employee" means any person employed by Valspar (i) who has spent over fifty percent (50%) of his or her time, from January 2016 to December 2016, working for or on behalf of the Industrial Wood Coatings Business, wherever located; or (ii) identified by agreement between Respondents and an Acquirer and made a part of a Divestiture Agreement.

AA. "Industrial Wood Coatings Facilities" means all real property interests (including fee simple interests and real property leasehold interests), including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held by Valspar, and all Tangible Personal Property, therein, at the High Point 1717 English Facility, High Point 2137 Brevard Facility, Cornwall Facility, High Point 1908 South Elm Facility, and High Point 1647 English Facility; provided, however, that parts, inventory, designs, or other assets located at or within the Industrial Wood Coatings Facilities and primarily used by or for the Retained Business may be excluded.

BB. "Industrial Wood Coatings Intellectual Property" means all Intellectual Property used exclusively or primarily by or in connection with the Industrial Wood Coatings Products or the Industrial Wood Coatings Business that is owned, licensed, held, or controlled by Respondent Valspar as of the Acquisition Date, and all rights to obtain and file for Patents, Trademarks, and Copyrights and registrations thereof, and to sue and recover damages or to obtain injunctive relief for infringement, dilution, misappropriation, misuse, violation, or breach of any of the foregoing Industrial Wood Coatings Intellectual Property; provided, however, that "Industrial Wood Coatings Intellectual Property" does not include the corporate names or corporate trade dress of Respondent Valspar (e.g., "Valspar," "Val," or "Spar"), or the related corporate logos thereof, or general registered images or symbols by which Respondent Valspar can be identified or defined.

CC. "Industrial Wood Coatings Products" means the paints, primers, varnishes, glazes, sealers, lacquers, stains, colorants, catalysts, reducers, thinners, masks, fillers, pastes, retarders, additives, and other coatings and coating-related products and services that are currently, or have been offered, sold or made available to customers (as well as any related products or services that are currently in development) by Respondent Valspar

through its "Valspar Wood" or "Valspar Flooring" business for use in manufacturing cabinets, furniture (and related products including caskets and musical instruments), flooring, and building products (including exterior composites, structural panels, siding and trim, doors and windows, floors, paneling, tileboard, interior composites, and moldings).

DD. "Industrial Wood Coatings Research and Development Assets" means all assets, including, but not limited to, research and development equipment, application engineering equipment, and accelerated exposure equipment, located at the Minneapolis, Minnesota research and development lab of Respondent Valspar and used exclusively or primarily by any Industrial Wood Coatings Employee.

EE. "Input Price" means the internal transfer pricing of inputs, including, but not limited to, resins, colorants, other raw materials, or finished goods, used in the Industrial Wood Coatings Business and obtained from subsidiaries or affiliates of Respondent Valspar that are not part of the Industrial Woods Coatings Business, as calculated in a manner consistent with the internal transfer pricing of Respondent Valspar prior to the Acquisition Date.

FF. "Intellectual Property" means all intellectual property that is owned, licensed, or controlled by Respondent Valspar as of the Acquisition Date, and all associated rights thereto, including all of the following:

1. Patents;

2. Trademarks and Trade Dress;

3. Manufacturing Technology;

4. Copyrights;

5. Trade Secrets; and

6. Software.

GG. "Intellectual Property License" means an irrevocable, fully paid-up and royalty-free license to the Trademarks, corporate names or corporate trade dress of Respondent Valspar (*i.e.*, "Valspar," "Val," or "Spar") with rights to sublicense approved by the Commission and sufficient for an Acquirer to operate the Industrial Wood Coatings Business for a transitional period in substantially the same manner as Respondent Valspar prior to the Acquisition.

HH. "Manufacturing Technology" means all technology (including process technology, technology for equipment, inspection technology, and research and development of product or process technology), Trade Secrets, formulas, formulations, descriptions of all ingredients, materials, or components, and proprietary information (whether patented, patentable, or otherwise) used in the manufacture of products.

II. "Monitor" means any monitor appointed pursuant to Paragraph III of this Order.

JJ. "Monitor Agreement" means the Monitor Agreement dated May 19, 2017, between Analysis Group, Inc. and The Sherwin-Williams Company. The Monitor Agreement is attached as Appendix D to this Order.

KK. "Patents" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention, and statutory invention registrations, in each case filed or existing as of the Acquisition Date, and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions.

LL. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other business entity.

MM. "Remedial Agreement(s)" means:

1. Any agreement between Respondents and an Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, and divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final; and/or

2. Any agreement between Respondents and an Acquirer (or between a Divestiture Trustee and an Acquirer) that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, related to the relevant assets or rights to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and that has been approved by the Commission to accomplish the requirements of the Order.

NN. "Retained Business" means the assets and businesses of Respondents other than the Industrial Wood Coatings Business.

OO. "Software" means computer programs, including all software implementations of algorithms, models, and methodologies whether in source code or object code form, databases and compilations, including any and all data and collections of data, all documentation, including user manuals and training materials, related to the foregoing and the content and information contained on any website; *provided, however,* that "Software" does not include software that is readily purchasable or licensable from sources other than the Respondents and which has not been modified in a manner material to the use or function thereof (other than user preference settings).

PP. "Supply Agreement" means any agreement approved by the Commission between Respondents and an Acquirer for the supply of inputs to the manufacture of Industrial Wood Coatings Products that prior to the Divestiture Date were supplied to the Industrial Wood Coatings Business by subsidiaries or affiliates of Respondent Valspar that are not included in the Industrial Wood Coatings Business.

QQ. "Tangible Personal Property" means all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, rolling stock, and other items of tangible personal property (other than inventories) of every kind owned or leased by Respondent Valspar and primarily related to the operation of the Industrial Wood Coatings Business, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

RR. "Third Party(ies)" means any Person other than the Respondents or the Acquirer.

SS. "Toll Manufacturing Agreement" means any agreement approved by the Commission between Respondents and an Acquirer for the supply of Industrial Wood Coating Products.

TT. "Trade Dress" means the current trade dress of a product, including, but not limited to, product packaging and the lettering of the product trade name or brand name.

UU. "Trade Secrets" means all trade secrets, know-how, data, practices, methods, and confidential or proprietary information (whether patented, patentable, or otherwise), including, but not limited to: ideas, inventions, and concepts; research and development; plans (including proposed and tentative plans, whether or not adopted or commercialized); formulas; techniques; compositions; technical data and information; designs; drawings; specifications; technology; processes; analytical methods; manufacturing, engineering, and other manuals and drawings; standard operating procedures; flow diagrams; chemical, safety, and general quality assurance and quality control methods, processes, and history; research records; clinical data; annual product reviews; regulatory communications; current and historical information associated with any Government Entity approvals and compliance; labeling and all other information related to the manufacturing process; and supplier lists.

VV. "Trademark(s)" means all proprietary names or designations, registered and unregistered trademarks, service marks, trade names, brand names, commercial names, "doing business as" (d/b/a) names, logos, and slogans, together with all translations, adaptions, derivations, and combinations thereof, including registrations and applications for registration therefor (and all renewals, modifications, and extensions thereof), all common law rights, and all goodwill symbolized thereby and associated therewith.

WW. "Transition Services" means any transitional services required by the Acquirer for the operation of the divested business including, but not limited to administrative assistance (including, but not limited to, order processing, shipping, accounting, and information transitioning services), and technical assistance.

XX. "Transition Services Agreement(s)" means:

1. The agreements between Respondents and Axalta for the provision of Transition Services and attached to this Order as Non-Public Appendix B; or

2. Any agreement approved by the Commission entered into between Respondents and an Acquirer (or the Divestiture Trustee and an Acquirer) for the provision of Transition Services.

II.

IT IS FURTHER ORDERED that:

A. Within ten (10) days of the Acquisition Date, Respondents shall divest the Industrial Wood Coatings Business and grant an Intellectual Property License to Axalta, pursuant to and in accordance with the Divestiture Agreement (which shall not limit or contradict, or be construed to vary from or contradict, the terms of this Order), and such agreement, if it becomes a Remedial Agreement related to the Industrial Wood Coatings Business, is incorporated by reference into this Order and made a part hereof;

Provided, however, if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that Axalta is not an acceptable Acquirer of the Industrial Wood Coatings Business then Respondents shall immediately rescind the transaction with Axalta, in whole or in part, as directed by the Commission, and shall divest, license, and/or transfer the Industrial Wood Coatings Business within six (6) months from the date this Order is issued, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission;

Provided further, that if Respondents have complied with the terms of this Paragraph before the date on which this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that the manner in which the divestiture was accomplished is not acceptable, the Commission may direct Respondents or appoint the Divestiture Trustee, to effect such modifications to the manner of the divestiture to Axalta (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Prior to the Divestiture Date, Respondents shall secure all consents and waivers from any Third Parties or Government Entities that are necessary for the divestiture of the Industrial Wood Coatings Business to the Acquirer, or for the continued research, development, manufacture, distribution, marketing, or sale of Industrial Wood Coatings Products by the Acquirer; *provided, however*, that Respondents may satisfy this requirement by certifying that the Acquirer has entered into equivalent agreements or arrangements directly with the relevant Third Party(ies) or otherwise obtained all necessary consents and waivers.

C. At the request of the Acquirer, for a period not to exceed two (2) years following the Divestiture Date, Respondents shall enter into a Toll Manufacturing Agreement with the Acquirer to supply the Acquirer with Industrial Wood Coatings Products at no more than Respondents' Input Price.

D. At the request of the Acquirer, for a period not to exceed five (5) years following the Divestiture Date, Respondents shall enter into a Supply Agreement with the Acquirer to supply inputs to the manufacture of Industrial Wood Coatings Products in a manner consistent with the operation of the Industrial Wood Coatings Business prior to the Acquisition Date, at no more than the Input Price;

Provided however, that nothing in this Order shall prohibit Respondents from supplying the Acquirer with inputs to the manufacture of Industrial Wood Coatings Products after the term of the Supply Agreement as mutually agreed between Respondents and the Acquirer.

E. Respondents shall, at the option of the Acquirer provide Transition Services to the Acquirer pursuant to a Transition Services Agreement that receives the prior approval of the Commission. *Provided, however*, that such Agreement shall provide that: (i) the Acquirer may terminate the Agreement or any portion thereof at any time, without cost or penalty to the Acquirer, upon commercially reasonable notice to Respondents; and (ii) at the Acquirer's request, Respondents shall agree to extend the term as to any Transition Service(s) for an additional period such that the period in which Respondents are obliged to provide any Transition Service(s) in total does not exceed two years. At the Acquirer's request, Respondents shall agree to extend the term of any Transition Service(s) for up to an additional one (1) year, and shall file with the Commission any request for prior

approval to extend the term of such Transition Services. The Transition Services provided pursuant to a Transition Services Agreement shall be at no greater than Respondents' Direct Cost, *provided, however,* that Respondents may agree with the Acquirer to use a reasonable estimate of Direct Cost.

F. Within ten (10) days of the Divestiture Date, Respondents shall submit to the Acquirer, at Respondents' expense, all Business Records of the Industrial Wood Coatings Business, in good faith, and in a manner that ensures their completeness and accuracy and that fully preserves their usefulness; *provided, however,* pending complete delivery of all such Business Records of the Industrial Wood Coatings Business to the Acquirer, Respondents shall provide the Acquirer, and the Monitor, with access to all such Business Records of the Industrial Wood Coatings Business and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Industrial Wood Coatings Business and facilitating their delivery in a manner consistent with this Order.

G. Respondents shall ensure that employees of the Respondents' Retained Business shall not receive, have access to, use or continue to use, or disclose any Confidential Business Information pertaining to the Industrial Wood Coatings Business except in the course of:

1. Performing their obligations as permitted under this Order;

2. Performing their obligations under any Remedial Agreement; or

3. Complying with financial reporting requirements or environmental, health, and safety policies and standards, ensuring the integrity of the financial and operational controls on the Industrial Wood Coatings Business, obtaining legal advice, defending legal claims, investigations, or enforcing actions threatened or brought against the Industrial Wood Coatings Business, or as required by law.

H. If the receipt, access to, use, or disclosure of Confidential Business Information pertaining to the Industrial Wood Coatings Business is permitted to Respondents' employees under Paragraph II.G. of this Order, Respondents shall limit such information (i) only to those Persons who require such information for the purposes permitted under Paragraph II.G., (ii) only to the extent such Confidential Business Information is required, and (iii) only after such Persons have signed an appropriate agreement in writing to maintain the confidentiality of such information, including training of Respondents' employees and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

I. Respondents shall enforce the confidentiality terms of this Order as to any Third Parties and take such actions as are necessary to cause each such Person to comply with these terms, including all actions that Respondents would take to protect their own trade secrets and proprietary information.

J. From the date Respondents execute the Divestiture Agreement until the Employee Access Period terminates, Respondents shall provide a proposed Acquirer with the opportunity to recruit and employ any Industrial Wood Coatings Employee in conformance with the following:

1. No later than ten (10) days after a request from a proposed Acquirer, or staff of the Commission, Respondents shall provide a proposed Acquirer with the following information for each Industrial Wood Coatings Employee, as and to the extent permitted by law:

   a. name, job title or position, date of hire and effective service date;

   b. a specific description of the employee's responsibilities;

   c. the base salary or current wages;

   d. the most recent bonus paid, aggregate annual compensation for Valspar's last fiscal year, and current target or guaranteed bonus, if any;

   e. employment status (*i.e.*, active or on leave or disability; full-time or part-time);

   f. any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly-situated employees; and

   g. at a proposed Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant Industrial Wood Coatings Employee(s);

2. No later than ten (10) days after a request from a proposed Acquirer, Respondents shall provide the proposed Acquirer with:

   a. an opportunity to meet, personally and outside the presence or hearing of any employee or agent of Respondents, with any Industrial Wood Coatings Employee;

   b. an opportunity to inspect the personnel files and other documentation relating to any such employee, to the extent permissible under applicable laws; and

   c. an opportunity to make offers of employment to any Industrial Wood Coatings Employee; and

3. Respondents shall (i) not interfere, directly or indirectly, with the hiring or employing by a proposed Acquirer of any Industrial Wood Coatings Employee, (ii) not offer any incentive to any Industrial Wood Coatings Employee to decline employment with a proposed Acquirer, (iii) not make any counteroffer to any Industrial Wood Coatings Employee who receives a written offer of employment from a proposed Acquirer, and (iv) remove any impediments within the control of Respondents that may deter any Industrial Wood Coatings Employee from accepting employment with a proposed Acquirer, including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts with Respondents that would affect the ability of such employee to be employed by a proposed 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.

K. Respondents shall provide reasonable financial incentives to the senior management of the Industrial Wood Coatings Business, as listed in Non-Public Appendix C to this Order, as needed to facilitate the employment of such employees by the Acquirer.

L. For a period of two (2) years after the Divestiture Date, Respondents shall not, directly or indirectly, solicit, induce, or attempt to solicit or induce any Industrial Wood Coatings Employee to terminate his or her employment relationship with an Acquirer;

Provided, however, Respondents may: (i) advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, so long as these actions are not targeted specifically at any Industrial Wood Coatings Employees; and (ii) hire employees of the Industrial Wood Coatings Business who apply for employment with Respondents, so long as such individuals were not solicited by Respondents in violation of this paragraph;

Provided further, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any employee of the Industrial Wood Coatings Business if an Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the individual's employment has been terminated by an Acquirer.

M. Until Respondents (or the Divestiture Trustee) complete the divestiture and other obligations to transfer the Industrial Wood Coatings Business as required by this Order, Respondents shall take actions as are necessary to:

1. Maintain the full economic viability and marketability of the Industrial Wood Coatings Business;

2. Minimize any risk of loss of competitive potential for the Industrial Wood Coatings Business;

3. Prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets related to the Industrial Wood Coatings Business; and

4. Not sell, transfer, encumber, or otherwise impair the Industrial Wood Coatings Business (other than in the manner prescribed in this Order) nor take any action that lessens the full economic viability, marketability, or competitiveness of the Industrial Wood Coatings Business.

N. The purpose of this Paragraph II is to ensure the continued use of the relevant assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents, minimize the loss of competitive potential for the Industrial Wood Coatings Business, minimize the risk of disclosure or unauthorized use of Confidential Business Information related to the Industrial Wood Coatings Business, prevent the destruction, removal, wasting, deterioration, or impairment of the Industrial Wood Coatings Business, except for ordinary wear and tear, and remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. At any time after the Respondents sign the Consent Agreement in this matter, the Commission may appoint a monitor ("Monitor") to assure that the Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Remedial Agreements. The Commission hereby appoints Rebecca Kirk Fair of Analysis Group, Inc. as the Monitor and approves the Monitor Agreement between Analysis Group, Inc. and Respondents.

B. Not later than one (1) day after the appointment of the Monitor, Respondents shall, pursuant to the Monitor Agreement and to this Order, confer on the Monitor all the rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

C. The Monitor shall serve until the later of (i) five (5) 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 to accomplish the purposes of this Order.

D. Respondents 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 Respondents' compliance with the divestiture and asset maintenance obligations and related requirements 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 or its staff, including, but not limited to:

    a. Assuring that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order and the Remedial Agreements;

    b. Monitoring any Transition Services Agreement, any Supply Agreement (including by confirming the Input Prices) and any Toll Manufacturing Agreement (including by confirming any Input Prices); and

    c. Assuring that Confidential Business Information is not received or used by Respondents except as allowed in this Order;

2. The Monitor shall act in a fiduciary capacity for the benefit of the Commission;

3. The Monitor shall serve for such time as is necessary to monitor Respondents' compliance with the provisions of this Order and the Remedial Agreements;

4. 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 and the Remedial Agreements. 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 and the Remedial Agreements;

5. 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;

6. 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 malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph III, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph III.D.5 of this Order;

7. Respondents shall report to the Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Monitor shall evaluate the reports submitted to the Monitor by the Respondents, and any reports submitted by the Acquirer with respect to the performance of Respondents' obligations under this Order and the Remedial Agreements;

8. Within one (1) month from the date the Monitor is appointed pursuant to this Paragraph, every thirty (30) days thereafter until the first anniversary of the Divestiture Date, every sixty (60) days thereafter until Respondents have fully complied with the Transition Services Agreement and the Toll Manufacturing Agreement, and every ninety (90) days thereafter, and as otherwise requested by the Commission, the Monitor shall report in writing to the Commission concerning performance by Respondents of their obligations under this Order and the Remedial Agreements, including, but not limited to, pursuant to the Supply Agreement; and

9. Respondents may require the Monitor and each of the Monitors consultants, 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 related 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.

G. In the event a substitute Monitor is required, the Commission shall select the 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 the proposed substitute Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed substitute Monitor, Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor. Not later than ten (10) days after appointment of a substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the substitute Monitor all the rights and powers necessary to permit the substitute Monitor to monitor Respondents' compliance with the terms of this Order and the Remedial Agreements in a manner consistent with the purposes of this Order.

H. 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 and the Remedial Agreements.

IV.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II.A. of this Order, the Commission may appoint a Divestiture Trustee to divest the Industrial Wood Coatings Business and grant the Intellectual Property License in a manner that satisfies the requirements of this Order. The Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Monitor pursuant to the relevant provisions 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, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph 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 Respondents to comply with this Order.

C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have 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 Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an 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 relevant divestiture, license, or other transfer required by the Order.

E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents 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 assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets or rights that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, or to enter into a Toll Manufacturing Agreement, a Supply Agreement, or Transition Services Agreements;

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month 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 may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court; *provided, however,* that 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 or rights that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph IV in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best 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 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, 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 five (5) days of receiving notification of the Commission's approval;

5. The 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. The 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. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, 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 Respondents, 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. Respondents 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, willful or wanton acts, or bad faith by the Divestiture Trustee. For purposes of this Paragraph IV.E.6., the term "Divestiture Trustee" shall include all persons retained by the Divestiture Trustee pursuant to Paragraph IV.E.5. of this Order;

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 report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture;

9. Respondents 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; and

10. The Commission may require, among other things, the Divestiture Trustee and each of the Divestiture Trustee'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 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 IV.

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 divestiture required by this Order.

V.

IT IS FURTHER ORDERED that:

A. The Remedial Agreements shall not 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 the Respondents under such agreement.

B. The Remedial Agreements shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all provisions of the Remedial Agreements, and any breach by Respondents of any term of such agreement shall constitute a violation of this Order. If any term of the Remedial Agreements varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order. Any failure by the Respondents to comply with any term of such Divestiture Agreement shall constitute a failure to comply with this Order.

D. Respondents shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5). Notwithstanding any term of the Remedial Agreement(s), any modification or amendment of any Remedial Agreement made without the prior approval of the Commission, or as otherwise provided in Rule 2.41(f)(5), shall constitute a failure to comply with this Order.

VI.

IT IS FURTHER ORDERED that:

A. Within five (5) days of the Acquisition Date, Respondents shall submit to the Commission a letter certifying the date on which the Acquisition occurred.

B. Respondents shall submit to the Commission and, if appointed, the Monitor, a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:

1. Within thirty (30) days after the date this Order becomes final;

2. Every thirty (30) days thereafter until Respondents have fully divested, licensed, transferred and/or granted the Industrial Wood Coatings Business to an Acquirer until the first anniversary of the Divestiture Date;

3. Every sixty (60) days thereafter so long as Respondents have a continuing obligation under a Toll Manufacturing Agreement and/or Transition Services Agreement; and

4. Every ninety (90) days thereafter so long as Respondents have a continuing obligation under this Order and/or the Remedial Agreements to render services to the Acquirer or otherwise to comply with this Order, including, but not limited to, pursuant to a Supply Agreement.

C. At such other times as the Commission may request, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which it has complied and is complying with this Order and any Remedial Agreement.

VII.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of Respondents;

B. Any proposed acquisition, merger, or consolidation of Respondents; or

C. Any other change in the Respondents, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VIII.

IT IS FURTHER ORDERED that, for the purpose 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 Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during office hours of the Respondents 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 Respondents related to compliance with the Consent Agreement and/or this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on July 27, 2027.

By the Commission.

Donald S. Clark
Secretary

SEAL:
ISSUED: July 27, 2017

NON-PUBLIC APPENDIX A

DIVESTITURE AGREEMENT

[Redacted from the Public Record, but Incorporated by Reference]

NON-PUBLIC APPENDIX B

TRANSITION SERVICES AGREEMENT

[Redacted from the Public Record, but Incorporated by Reference]

NON-PUBLIC APPENDIX C

SENIOR MANAGEMENT

[Redacted from the Public Record, but Incorporated by Reference]

PUBLIC APPENDIX D

MONITOR AGREEMENT