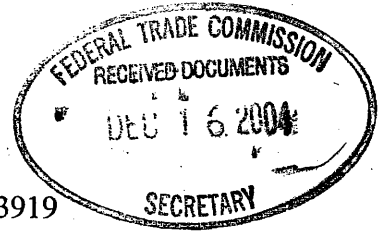


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



-----X
In the matter of)
Hoechst AG,)
a corporation, and)
Rhône-Poulenc S.A.,)
a corporation)
to be renamed)
Aventis S.A.,)
a corporation.)
-----X

Docket No.: C-3919

PUBLIC VERSION

PETITION OF AVENTIS TO REOPEN, MODIFY ORDER

1. Pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), and Section 2.51 of the Federal Trade Commission Rules of Practice, 16 C.F.R. § 2.51, Aventis S.A. (“Aventis”), the successor company to Rhône-Poulenc S.A. (“RP”)¹ and Hoechst AG (“Hoechst”) (collectively “Respondent”), by and through its undersigned counsel, hereby moves the Commission for an Order to reopen this matter for the limited purpose of modifying and setting aside certain portions of the Commission’s Decision and Order issued on January 18, 2000 and finalized on January 28, 2000, and previously modified on March 11, 2002, November 22, 2002 and January 27, 2004 (the “Order”). The Order and the orders modifying the Order are attached hereto as Exhibit 1A-E.

2. The Order, as modified, requires Respondent to reduce its “holdings in Rhodia to five (5) percent or less of Rhodia’s issued and outstanding voting securities” by April 22, 2005. Order ¶ VI.D. The Order also requires Respondent to maintain unsold Rhodia voting securities in escrow with a proxy system that prevents Respondent from exercising its voting rights (Order ¶ VI.C), and restricts Respondent from seeking to influence or receiving confidential information concerning Rhodia’s cellulose acetate business (Order ¶ VI.B). Paragraph VI of the Order was intended to ensure that Rhodia would be able to compete

¹ Aventis S.A. was recently acquired by Sanofi-Synthelabo.

independently with Celanese AG (“Celanese”), a wholly-owned specialty chemicals subsidiary of Hoechst that was to be spun off as an independent company prior to the Aventis merger. Former shareholders of Hoechst, including the Kuwait Petroleum Company (“KPC”), were to receive shares of both Aventis and Celanese as a result of the transaction. The Commission’s sole concern in this respect was that KPC could use its controlling interest in Celanese and its working control of Aventis to coordinate the activities of Celanese and, through Aventis, of Rhodia. *See In re Hoechst AG* (Docket No. C-3919), Analysis of Proposed Order to Aid Public Comment, at 1-2 (December 1999) (“Analysis”), attached hereto as Exhibit 2. *See also In re Hoechst AG* (Docket No. C-3919), Order Reopening and Modifying Order at 4 (January 27, 2004) (“January 27 Order”), attached hereto as Exhibit 1-D.

3. KPC has recently divested all of its shares in Celanese to BCP Crystal Acquisition Group GmbH & Co. KG, an entity affiliated with the Blackstone Group (“Blackstone”). On February 2, 2004 Blackstone launched a friendly public takeover of Celanese and announced that if successful, it intended to take Celanese private. *See Offer Document* by BCP Crystal Acquisition GmbH & Co. KG, February 2, 2004 at 33-37 (“Offer Document”), attached hereto as Exhibit 3. On April 2, 2004, Blackstone and Celanese announced that the tender offer was successful, with 83.6% of issued and outstanding shares being tendered, and that all the conditions precedent to completion of the offer had been met. *See Celanese Press Release*, April 2, 2004, attached hereto as Exhibit 4. Pursuant to the tender offer, KPC tendered all of its shares in Celanese AG to Blackstone. As a result of transferring all of its shares, KPC was removed from the Celanese AG shareholder registry on April 5, 2004. *See Letter from Celanese AG* dated July 2, 2004, (“Celanese Letter”), attached hereto as Exhibit 5.

4. KPC’s divestiture of all of its shareholdings in Celanese has removed its controlling interest in Celanese and thereby severed the common link between Celanese and Rhodia that was the basis of the Commission’s concern. As a result, KPC no longer has any ability to coordinate the activities of Celanese and Rhodia. In this way, the divestiture has accomplished through a different mechanism precisely the same goal that the provisions in Paragraph VI of the Order pertaining to influence over Rhodia are intended to attain. Thus, these provisions in Paragraph VI are now unnecessary. Furthermore, as explained in Aventis’

previous petitions to the Commission, the continued divestiture of Rhodia's shares by Aventis as required by Paragraph VI.D threatens to force Rhodia's share price down further and damage the company's ability to compete by worsening its already precarious financial situation.

5. In light of this change in fact, Respondent seeks to have the Order modified so that Respondent is no longer under any obligation with respect to the Rhodia shares and the conduct of Rhodia's cellulose acetate business. Therefore, Respondent hereby petitions the Commission to re-open and modify the Order to set aside those provisions of the Order relating to Rhodia. Respondent's proposed language to effect this modification is found in Section IV *infra*.

I. BACKGROUND

A. Aventis transaction

6. This matter arose out of the 1999 merger of RP's and Hoechst's respective life science businesses to form Aventis. The companies did not contribute their specialty chemicals businesses to the venture. Instead, they structured the transaction so that their life science businesses would be combined into the new company, while their non-life science businesses would be spun off as independent entities.

7. Although the Commission's investigation of the merger focused on the RP and Hoechst life science businesses, the Commission was also concerned about the merger's potential competitive effects in the market for cellulose acetate, a specialty chemical product used in the production of cigarette filters, films, and other products.

8. At the time of the merger, cellulose acetate was produced in the U.S. by only three companies – Celanese, which accounted for 46 percent of U.S. production of the product and which was wholly-owned by Hoechst; Eastman Chemical Company, which accounted for 44 percent of U.S. production; and Primester, a 50/50 production joint venture between Rhodia and Eastman that accounted for the remaining 10 percent of U.S. production. Only Celanese and Eastman actually sold any cellulose acetate in the U.S. *See* Analysis at 1.

9. In November 1999, the Commission furnished RP and Hoechst with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would have charged RP and Hoechst with a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. The complaint alleged that the proposed merger would lessen competition in two markets: (1) the direct thrombin inhibitor market; and (2) the market for cellulose acetate. The complaint did not allege that the proposed merger would lessen competition in any other relevant market. The direct thrombin inhibitor market is not relevant to this petition.

10. The Commission was concerned that the Aventis transaction would “increase the likelihood of coordinated interaction in the market for cellulose acetate,” through Aventis’ largest shareholder, the Kuwait Petroleum Company (“KPC”). Analysis at 2. As a result of the transaction Aventis was to hold the former RP’s 67 percent interest in Rhodia, which in turn would continue to have access to 5 percent of the cellulose acetate produced annually in the U.S. (one half of Primester’s production). Although Aventis itself would hold no interest in Celanese, the former Hoechst shareholders, including KPC, were to receive shares in both the new company and Celanese, which was spun off as an independent company prior to the merger. As a result, KPC would hold what the Commission called “a controlling interest” in Celanese and “working control” of Aventis. The Commission believed that “[t]hese shareholdings could permit KPC to coordinate the activities of Celanese and, through Aventis, Rhodia and Primester after the merger.” *Id.*

B. The Order and Previous Modifications to the Order

11. To address concerns that KPC would be able to coordinate the cellulose acetate businesses of Rhodia/Primester and Celanese, the Order was designed to sever the common link between the two businesses by precluding KPC from influencing one of them – Rhodia/Primester. Paragraphs VI.B, VI.C, and VI.D of the Order seek to accomplish this through certain obligations that remove KPC’s ability to influence Rhodia and Primester through Aventis.

12. Paragraph VI.D of the Order, as amended, provides that “By April 22, 2005, *i.e.*, six (6) months from the end of the note exchange period described in the Form F-3, Respondents shall have reduced their holdings in Rhodia to five (5) percent or less of Rhodia’s issued and outstanding voting securities.” Order ¶ VI.D (as modified by the Commission on November 22, 2002 and January 27, 2004).

13. To ensure that Rhodia would be able to compete independently during this period, Paragraphs VI.B and VI.C of the Order require that Respondent place its Rhodia shares in escrow and refrain from participating in any decisions, seeking to influence or receiving any confidential business information concerning Rhodia’s cellulose acetate business. The company also established a proxy system approved by the European Commission to govern the voting of the shares.

14. In October 1999, two months prior to the consummation of the Aventis merger, RP reduced its Rhodia stake to 25 percent through a public offering.

15. On December 7, 1999, RP and Hoechst, their attorneys, and counsel for the Commission executed an agreement containing the Order, which the Commission executed and then placed on the public record.

16. On December 15, 1999, RP and Hoechst consummated the transaction contemplated by the Merger Agreement by combining their life sciences businesses into Aventis.

17. On January 18, 2000, the Commission, in conformity with procedures described in § 2.34 of its Rules, entered the Order.

18. In early 2000 Rhodia’s share price began a steady decline from € 20-22 per share in late 1999 and early 2000 to less than € 9 per share in the summer of 2002. These unforeseen developments hampered Respondent’s ability to comply with the Order and necessitated several modifications to the Order.

19. On November 22, 2002, the Commission granted Respondent’s petition to reopen and modify the Order to permit Respondent to dispose of its Rhodia shares other than through the exchangeable notes program. The severe decline in Rhodia’s share price made it

unlikely that any noteholders would exchange their notes for shares in accordance with the plan. Accordingly, Respondent was concerned that it would have only a six-month window in which to divest itself of a very large number of Rhodia shares, and that this would have a deleterious effect on Rhodia. The Commission granted Respondent's Petition to Reopen and Modify the Order so as to allow Respondent to use alternative methods to divest the shares by April 22, 2004, but maintained the escrow arrangements and the proxy system with respect to such unsold shares. *See In re Hoechst AG* (Docket No. C-3919), Order Reopening and Modifying Order at 3 (November 22, 2002) ("November 22 Order").

20. In 2003, Rhodia's financial problems worsened and its share price continued to decline, hampering still further Respondent's ability to dispose of the shares. *See* January 27 Order at 1-3. In April 2003, Respondent entered into an agreement with Credit Lyonnais to sell a bloc of shares amounting to 9.9% of total issued and outstanding shares of Rhodia. In connection with the sale, Respondent entered into a derivative financial instrument relating to the future performance of the Rhodia shares (the "Total Return Swap" or "TRS"). The TRS was designed to facilitate the sale of Rhodia securities by offering Credit Lyonnais some financial protection against further declines in the Rhodia stock price. On September 23, 2003, Respondent filed a petition to reopen and modify the Order to permit Respondent to enter into the TRS and instruments substantially similar to the TRS. *See In re Hoechst AG* (Docket No. C-3919), Petition of Aventis to Reopen and Modify Order (September 23, 2003), the non-confidential version of which is attached hereto as Exhibit 6.

21. On January 27, 2004, the Commission granted Respondent's petition to reopen and modify the Order to allow Respondent to divest the shares to Credit Lyonnais pursuant to the TRS Agreement and to allow Respondent to use substantially similar risk-reducing arrangements in the sale of its remaining shares. The Commission granted Respondent's petition, concluding that such instruments would not affect the competitive protections of the Order and were necessary to ensure an orderly divestiture on the basis that "investors are unlikely to purchase Rhodia's stock in a declining market without receiving protection from further decline in the price of the stock." January 27 Order at 2.

22. The Commission also granted Respondent's request to extend the deadline to divest the securities for 12 months, until April 22, 2005. This extension was necessary to accommodate Rhodia's urgent financial restructuring, which was scheduled for the second quarter of 2004. Divesting Respondent's remaining shares prior to the April 2004 deadline would likely interfere with the restructuring plan and gravely endanger its implementation. *See In re Hoechst AG* (Docket No. C-3919), Request of Aventis for Extension of Time (December 5, 2003) at 1 ("December 5 Request), the non-confidential version of which is attached hereto as Exhibit 7.

C. BCP's Public Takeover of Celanese

23. On February 2, 2004, BCP Acquisition GmbH & Co. KG ("BCP"), an entity affiliated with the Blackstone Group, a U.S.-based private equity fund, launched a public tender offer for Celanese. *See Offer Document* at 2.

24. In Conjunction with the tender offer, BCP announced that on December 15, 2003, it had entered into an agreement with KPC, the largest shareholder of Celanese, holding 14,400,000 shares or approximately 29% of the outstanding shares of Celanese. KPC agreed to support the BCP bid and to tender all of its Celanese shares in the offer. *Offer Document* at 11.

25. On March 13, 2004, BCP extended the acceptance period for the tender offer until March 29, 2004 and altered the minimum acceptance condition from 85% to 75% of issued and outstanding shares. *See BCP Press Release* dated March 12, 2004, attached hereto as Exhibit 8. The Offer Document filed by Blackstone stated that Blackstone intended to delist Celanese from the NYSE and potentially from the Frankfurt stock exchange. *See Offer Document* at 33. The Offer Document also stated that Blackstone contemplated a "squeeze out" of minority investors or the conversion of Celanese to a limited partnership of limited liability company. *Id.* at 33-37.

26. On April 2, 2004 BCP and Celanese announced that the minimum acceptance condition had been met and that all other conditions precedent to completion of the tender offer had been satisfied. BCP announced that "the share purchase and transfer agreements between BCP Crystal Acquisition GmbH & Co. KG and the accepting shareholders of Celanese

AG ... took effect and will be consummated in accordance with the terms of the offer document and the amendment to the takeover offer.” See Publication of BCP Crystal Acquisition GmbH & Co. KG Pursuant to Section 23 of the German Securities Acquisition and Takeover Act, April 3, 2004, attached hereto as Exhibit 9.

27. In accordance with the December 15, 2003 agreement, KPC transferred all of its shares in Celanese to BCP. As a result, KPC was removed from the Celanese AG shareholder registry on April 5, 2004. See Celanese Letter at 1. Thus, KPC no longer has any legal or economic interest in Celanese.

28. As a result of the successful tender offer, Blackstone (through BCP) now holds over 84% of the outstanding shares in Celanese. Celanese has recently announced that it intends to hold an extraordinary general meeting seeking approval of a domination and profit transfer agreement with BCP, followed by a “squeeze out” of minority shareholders and a delisting from the Frankfurt Stock Exchange. See Report of the Chairman of the Board of Celanese AG, Annual General Meeting, June 15, 2004, attached hereto as Exhibit 10.

29. Blackstone does not hold any voting securities of Rhodia. See Affidavit of Nicolas Nerot, Director of Financial Communication of Rhodia (“Rhodia Aff.”), attached hereto as Exhibit 11.

D. Rhodia’s Current Financial Condition

30. Rhodia remains in severe financial difficulty. Today, Rhodia’s shares trade at approximately € 1- 2 per share, down from € 22 per share in the months that followed the Aventis transaction. Rhodia’s debt remains extremely high and Rhodia faces challenging conditions in its core businesses. Analysts remain skeptical that the company will be able to overcome its financial and managerial problems. See Exhibit 12 attached hereto, containing various recent news articles on Rhodia’s performance. See also Affidavit of Marc Silsiguen (“Silsiguen Aff.”), the non-confidential version of which is attached hereto as Exhibit 13.

31. Rhodia has been undergoing major restructuring. Rhodia has divested certain businesses in order to reduce its debt load. On December 23, 2003, Rhodia signed a significant refinancing agreement with its creditor banks. Silsiguen Aff. ¶ 8. On February 13,

2004, Rhodia announced that it had signed an agreement with investors holding its U.S. private placement notes. On April 6, 2004, Rhodia launched a capital increase of € 471 million with preferential subscription rights for existing shareholders, as well as a bond issue of at least € 600 million. Respondent has subscribed to the capital increase in proportion to its current 15.3 per cent holding of Rhodia's issued and outstanding voting securities. *Id.* at ¶ 10.

32.

REDACTED

REDACTED

Such an outcome would put even further strain on Rhodia's ability to remain viable in the markets in which it operates. *Id.* at ¶ 13.

II. CHANGED CONDITIONS AND THE PUBLIC INTEREST REQUIRE MODIFICATION OF THE ORDER

A. Standard of Review

33. Section 5(b) of the Federal Trade Commission Act, 15 U.S. C. § 45(b), and Section 2.51(b) of the Commission's Rules of Practice, 16 C.F.R. § 2.51(b) provide that the Commission may reopen and modify an order if the respondent makes a satisfactory showing that changed conditions of law or fact require the rule to be altered, modified or set aside or the public interest so requires.

34. With respect to changed conditions of law or fact, a showing sufficient to require reopening is made when a request to re-open identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Culligan, 113 F.T.C. at 369 (citing *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932); *United States v. Louisiana-Pacific Corp.*, 754 F.2d 1445, 1448-49 (9th Cir. 1985) (discussing legislative history)). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and

extent of the modification.” In re Stop and Shop Companies, Inc., (Docket No. C-3649), Order Reopening and Modifying Order, June 20, 1997.

B. The Divestiture of KPC’s Holdings in Celanese Constitutes a Change in Fact Requiring Modification of the Order

35. Changed conditions of fact require that the Order be re-opened and that those provisions relating to the divestiture of the Rhodia shares and the conduct of Rhodia’s cellulose acetate business be terminated because the change in ownership and control of Celanese and concomitant divestiture of KPC’s Celanese shares, which was not foreseen at the time of the original Order, entirely eliminates the Commission’s concern regarding the potential for KPC to coordinate the activities of Celanese and Rhodia.

36. The Order was intended to address the concern that KPC would be able to use its shareholdings in both Celanese and Respondent to coordinate the activities of Rhodia and Celanese. Paragraph 12 of the Complaint stated that:

“One Celanese shareholder, the Kuwait Petroleum Company (“KPC”), holds 25 percent of Celanese, and pursuant to the merger will hold between 12.5 and 15 per cent of Aventis. Therefore, because the remaining shares of both entities are widely held, KPC will gain significant control of Rhodia, through Aventis, and will also control Celanese.”

37. In its Analysis to Aid Public Comment, the Commission stated its competitive concern that:

“These shareholdings could permit KPC to coordinate the activities of Celanese and, through Aventis, Rhodia and Primester after the merger. In addition, Aventis’ indirect holding, through Rhodia, of 50% of the Primester joint venture with Eastman may facilitate coordination between the KPC-controlled entities and Eastman following the merger.”

Analysis at 2.

38. The Order sought to address this concern by severing the common linkage between Rhodia/Primester and Celanese by precluding KPC from influencing one of the companies – Rhodia/Primester. Without KPC’s control over Rhodia, through Aventis, the potential coordination would not be possible.

39. The takeover of Celanese by Blackstone and the associated transfer of all of KPC's interests to Blackstone has achieved by different means the same relief contemplated by the Order. Instead of severing the common link between Rhodia and Celanese by precluding KPC's influence over Rhodia, the takeover of Celanese severs the common link by precluding KPC's influence over Celanese. Now that KPC has sold its shares and no longer retains any interest in Celanese, and because Blackstone holds no interest in Rhodia or Respondent, there is no longer any basis on which KPC (or any other shareholder) could coordinate the activities of Celanese and Rhodia. These changed circumstances therefore eliminate the need for the provisions in the Order relating to Rhodia, including: (i) the requirement that Respondent divest its Rhodia holdings; (ii) the remaining restrictions on Respondent's ability to vote its Rhodia shares; (iii) the conditional restrictions on Respondent's involvement in the cellulose acetate business of Rhodia. *See Union Carbide Corp.*, 108 F.T.C. 184, 188 (1986) (petitioner's sale of welding products and gas welding apparatus operations warranted deletion of references to these product lines from the order on change of fact and public interest grounds); *General Mills Fun Group, Inc.*, 106 F.T.C. 607 (1985) (sale of subsidiary that had engaged in violative conduct deemed a change in fact warranting modification); *In re Allegheny Corp.* (Docket No. C-3335), Order Reopening and Modifying Order (February 11, 1999) (spin-off of title plant/back plant business relieved Allegheny of its compliance obligations under Order).

40. Thus, the divestiture of KPC's shareholdings in Celanese constitutes a change in fact that eliminates the need for the provisions in the Order pertaining to Rhodia. Requiring Aventis to continue to abide by these restrictions, without any offsetting benefits through the protection of competition, would be inequitable.

41. Furthermore, requiring Aventis to divest its remaining shareholdings in Rhodia would be harmful to competition. Indeed, Rhodia faces the same market challenges today that it did when the Commission granted Respondent's request to extend the time in which Respondent must divest the Rhodia shares. As detailed in the previous petitions and affidavits submitted by Respondent, which are incorporated herein by reference, Rhodia remains in serious financial distress. [REDACTED]

REDACTED

REDACTED

42. Given these circumstances, the forced sale of Rhodia's shares by one of its principal shareholders, Aventis, has the potential to erode Rhodia's already low stock price and could interfere with the company's restructuring plan that is needed for its future competitive viability. *Id.*

III. CONCLUSION

43. For the reasons listed above, Respondent respectfully requests that the Commission Reopen and set aside those portions of the Order pertaining to Rhodia. Such a modification is required due to an unforeseen, material change in facts that effectively remedies the competitive concern that was the basis for the Order. Moreover, requiring Aventis to continue to divest its shareholdings in Rhodia will harm competition by depressing Rhodia's stock price even further and potentially interfering with the company's much-needed restructuring.

IV. MODIFICATIONS REQUESTED

44. Respondent now approaches the Commission seeking to have certain terms of the Order modified as follows:

- a. Set aside Paragraph VI.B, VI.C, VI.D, VII and VIII of the Order.
- b. Replace Paragraph IX with the following text:

IT IS FURTHER ORDERED that within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II.B. through II.G., or until a trustee has been appointed pursuant to Paragraph IV.A., and Respondents have complied with Paragraph VI.A. of this Order, Respondents shall submit to the Commission 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. Respondents shall submit at the same time a copy of their report concerning compliance with this Order to any Interim Trustee(s) who has been appointed. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II.B. through II.G. and Paragraph VI.A. of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identities of all parties contacted. Respondents shall include in

their reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations. After completing the obligations required under Paragraphs II.B. through II.G. and Paragraphs VI.A. of this Order, Respondents shall submit reports, setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order, every year beginning on the anniversary of the date this Order became final until and including the tenth anniversary date of this Order.

c. Replace Paragraph XII with the following:

IT IS FURTHER ORDERED that this order shall terminate at the earlier of: (1) ten (10) years from the date this Order is effective; or (2) after the divestitures required by Paragraphs II.B. through II.F., IV., V., and VI. of this Order have been accomplished.

45. Respondent has discussed this modification with the staff of the Bureau of Competition, which has indicated that it is prepared to recommend that the Commission grant Respondent's petition to modify the Order as requested herein.

46. As required by Section 2.51(b) of the Commission's Rules of Practice, 16 I.E. ¶2.51(b), affidavits by Marc Silsiguen, Head of Corporate Finance at Aventis, and Nicolas Nerot, Director of Financial Communication of Rhodia are attached hereto. These affidavits and the accompanying documentary attachments set forth the specific facts demonstrating the reasons why changed conditions of fact require the requested modification of the Order.

* * * * *

For the reasons given above, the Commission should grant Respondent's Petition to Reopen and Modify Order as described herein, and should grant such other further relief as would reduce the burden of this Order on Respondent, as the Commission may determine to be in the Public Interest.

Dated: December 15, 2004

Respectfully submitted,

PUBLIC VERSION

AVENTIS, S.A.

A handwritten signature in black ink, appearing to be 'D. Wales', written over a horizontal line.

David P. Wales
Beau W. Buffier
SHEARMAN & STERLING
801 Pennsylvania Avenue, N.W.
Washington, DC 20004-2604

Exhibits 1- 13

(Public Versions)