

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

COMMISSIONERS: **Joseph J. Simons, Chairman**
 Noah Joshua Phillips
 Rohit Chopra
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

One Rock Capital Partners II, LP
 a limited partnership,

FXI Holdings, Inc.
 a corporation,

and

Bain Capital Fund XI, LP
 a limited partnership,

and

Innocor, Inc.
 a corporation.

DECISION AND ORDER
DOCKET NO. C-4708

DECISION

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent FXI Holdings, Inc., an indirect subsidiary of Respondent One Rock Capital Partners II, LP, of Respondent Innocor, Inc., an indirect subsidiary of Respondent Bain Capital Fund XI, LP (each a “Respondent,” and collectively “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Order (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission considered the matter and 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. The Commission accepted the Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments; at the same time, it issued and served its Complaint and Order to Maintain Assets. The Commission duly considered any comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure described in Rule 2.34, the Commission makes the following jurisdictional findings:

1. Respondent One Rock Capital Partners II, LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 30 Rockefeller Plaza, 54th Floor, New York, NY 10112.
2. Respondent FXI Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 100 Matsonford Road, 5 Radnor Corporate Center, Suite 300, Radnor, PA 19087-4560.
3. Respondent Bain Capital Fund XI, LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the Cayman Islands, with its executive offices and principal place of business located at 200 Clarendon Street, Boston, MA 02116.
4. Respondent Innocor, Inc. is a corporation, existing, organized, and doing business under and by virtue of the laws of New Jersey, with its executive offices and principal place of business located at 200 Schulz Drive, Red Bank, NJ 07701.
5. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I. Definitions

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

- A. “FXI” means FXI Holdings, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by FXI Holdings, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “One Rock Capital” means One Rock Capital Partners II, LP, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by One Rock Capital Partners II, LP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Innocor” means Innocor, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Innocor, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- D. “Bain” means Bain Capital Fund XI, LP, its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Bain Capital Fund XI, LP, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- E. “Future Foam” means Future Foam, Inc., a corporation organized, existing, and doing business under and by virtue of the laws of Nebraska, with its offices and principal place of business located at 1610 Avenue N. Council Bluffs, Iowa, 51501.
- F. “Commission” means the Federal Trade Commission.
- G. “Acquirer” means:
 - 1. Future Foam; or
 - 2. Any other person that the Commission approves to acquire the Polyurethane Foam Assets pursuant to this Decision and Order.
- H. “Acquisition” means the proposed acquisition by FXI of Innocor pursuant to the terms set forth in the transaction agreement by and among Respondents dated as of March 4, 2019.
- I. “Acquisition Date” means the date Respondents consummate the Acquisition.
- J. “Business Information” means all books, records, data, and information, wherever located and however stored, relating to the Polyurethane Foam Assets or used in the Polyurethane Foam Business, including documents, written information, graphic materials, and data and information in electronic format, along with the unwritten

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

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

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

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

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

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

M. "Contract" means a contract, lease, sub-lease and other agreement or obligation.

N. "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. "Direct Cost" to the Acquirer for its use of any of the Respondents' employees shall not exceed then-current average hourly wage rate for such employee.

O. "Divestiture Agreement" means:

1. Future Foam Divestiture Agreement; or
2. Any agreement between Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) and an Acquirer to purchase the Polyurethane Foam Assets, and all amendments, exhibits, attachments, ancillary agreements (including any Shared Intellectual Property License or agreements to provide Transition Assistance), and schedules thereto.

- P. “Divestiture Date” means the date on which Respondents (or a Divestiture Trustee appointed pursuant to Paragraph IX of this Order) close on each of the divestitures required by Paragraph II of this Order.
- Q. “Divestiture Trustee” means the trustee appointed by the Commission pursuant to Paragraph IX of this Order.
- R. “Elkhart Polyurethane Foam Facility” means Respondent Innocor’s polyurethane foam production facilities located at 1900 West Lusher Road in Elkhart, Indiana, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.
- S. “Employee Information” means, for each Polyurethane Foam Employee, the following information summarizing the employment history of each employee that includes, as requested by the proposed Acquirer and to the extent permitted by applicable law:
1. Name, job title or position, date of hire, and effective service date;
 2. Specific description of the employee’s responsibilities;
 3. The base salary or current wages;
 4. Most recent bonus paid, aggregate annual compensation for Respondents’ last fiscal year, and current target or guaranteed bonus, if any;
 5. Written performance reviews for the past three years, if any;
 6. Employment status (*i.e.*, active or on leave or disability; full-time or part-time);
 7. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 8. At the proposed Acquirer’s option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the employee.
- T. “Excluded Assets” means those assets and Contracts listed at Non-Public Appendix III to this Order.
- U. “Future Foam Divestiture Agreement” means the agreements by and among the applicable Respondents and Future Foam, dated as of January 27, 2020, and all amendments, exhibits, attachments, ancillary agreements (including any agreements for Transition Assistance) related thereto and attached to this Order as Non-Public Appendix I.
- V. “Governmental Authorization” means any license, registration, or permit issued, granted, given or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement.
- W. “Intellectual Property” means intellectual property of any kind, including patents, patent applications, mask works, trademarks, service marks, copyrights, trade dress, commercial names, internet web sites, internet domain names, inventions, discoveries, written and unwritten know-how, process technology, engineering technology, product technology, product rights, trade secrets, and proprietary information.

- X. “Kent Polyurethane Foam Facility” means Respondent FXI’s polyurethane foam production facilities located at 19635 78th Avenue and 7620 S. 196 Street in Kent, Washington, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.
- Y. “Key Employees” means the employees listed at Appendix II to this Order.
- Z. “Monitor” means the person approved by the Commission to serve as a Monitor pursuant to this Order or the Order to Maintain Assets.
- AA. “Polyurethane Foam Assets” means all of Respondent’s legal or equitable rights, title, and interests in and to all tangible and intangible assets, wherever located, relating to the Polyurethane Foam Business (including any such assets removed and not replaced after the announcement of the Acquisition, other than in the ordinary course of business), including:
1. The Polyurethane Foam Facilities;
 2. Real property interests owned, leased or otherwise held, including easements and appurtenances, together with buildings, facilities and other structures, and improvements thereto;
 3. Intangible rights and property, including Intellectual Property, owned, used, or licensed (as licensor or licensee) by Respondent, going concern value, goodwill, and telephone listings, internet sites and social media accounts;
 4. Tangible personal property, whether owned or leased, including machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, together with all express or implied warranties by manufacturers, sellers or lessors and all maintenance records and operating manuals;
 5. Inventories;
 6. Business Information;
 7. Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto; and
 8. Governmental Authorizations and all pending applications therefor or renewals thereof;
 9. *Provided, however*, that Polyurethane Foam Assets need not include:
 - a. Corporate headquarters of Respondents;
 - b. Corporate, business, or other names of Respondents or any logo, trademark, service mark, domain name, trade or other name or any derivation thereof;
 - c. Cash, cash equivalents and accounts receivable;
 - d. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings);

- e. Enterprise software that Respondents also use in their businesses other than the Polyurethane Foam Business;
 - f. The portion of Business Information that contains information about any business other than the business divested to an Acquirer;
 - g. Any original document that Respondents have a legal, contractual, or fiduciary obligation to retain the original; *provided, however*, that Respondents shall provide copies of the record and shall provide the Acquirer access to the original materials if copies are insufficient for regulatory or evidentiary purposes; and
 - h. The following assets, unless the Commission, in its sole discretion and within 12 months of the date this Order is issued, determines in consultation with the Acquirer and the Monitor, that any such assets are necessary for the Acquirer to operate the Polyurethane Foam Assets or Polyurethane Foam Business in a manner that achieves the purposes of this Order:
 - i. Excluded Assets; and
 - ii. Shared Intellectual Property, but only if the Shared Intellectual Property License is granted pursuant to Paragraph II of this Order.
- BB. “Polyurethane Foam Business” means the applicable Respondent’s business of manufacturing, fabricating, and selling polyurethane foam and related products at the Polyurethane Foam Facilities.
- CC. “Polyurethane Foam Employees” means: (1) with respect to each of the Polyurethane Foam Facilities, each of Respondents employees who were employed or under contract by the Polyurethane Foam Business at any time between June 1, 2019, and the Divestiture Date; and (2) the Key Employees.
- DD. “Polyurethane Foam Facilities” means the Elkhart Polyurethane Foam Facility, the Kent Polyurethane Foam Facility, and the Tupelo Polyurethane Foam Facility.
- EE. “Relevant Area” means the states of Indiana, Michigan, Mississippi, Ohio, Oregon, and Washington.
- FF. “Shared Intellectual Property” means Intellectual Property that, at any time prior to the Divestiture Date, was used by both the Polyurethane Foam Business and Respondents’ retained businesses.
- GG. “Shared Intellectual Property License” means a perpetual, non-exclusive, fully paid-up, irrevocable, transferable, and royalty-free license(s), granted by Respondents to an Acquirer, to use Shared Intellectual Property (other than trademarks, domain names, and similar names and marks) in the operation of the Polyurethane Foam Business.
- HH. “Tupelo Polyurethane Foam Facility” means Respondent Innocor’s polyurethane foam production facilities located at 1665 South Veterans Boulevard in Tupelo, Mississippi, including associated production plants, warehouses, storage facilities, equipment, offices, fabricating operations, and transportation assets.

- II. “Transition Assistance” means services, assistance, cooperation, training and access to personnel regarding the transfer and operation of the Polyurethane Foam Business, including, but not limited to, accounting and finance, human resources (employee benefits, payroll, etc.) information technology and systems, logistics (purchasing, distribution, warehousing, supply chain management, etc.), manufacturing (technology, technology transfer, operating permits and licenses, regulatory compliance, quality control, manufacturing processes and troubleshooting, etc.), research and development, sales and marketing (including customer service), and allowing an Acquirer to use Respondents’ brands and marks for transitional purposes.

II. Divestiture

IT IS FURTHER ORDERED that:

- A. Within 10 days of the Acquisition Date, Respondents shall divest, absolutely and in good faith, the Polyurethane Foam Assets as an ongoing business to Future Foam pursuant to the Future Foam Divestiture Agreement.
- B. No later than the Divestiture Date, Respondents shall grant the Shared Intellectual Property License to Future Foam to use Shared Intellectual Property to operate the Polyurethane Foam Business, including by extending or improving existing products, processes, and services; developing new products, processes and services; and expanding, constructing, or operating additional on-site facilities or production lines.
- C. If Respondents have divested the Polyurethane Foam Assets to Future Foam before the Commission issues this Order, and the Commission subsequently notifies Respondents that:
1. Future Foam is not an acceptable Acquirer of the Polyurethane Foam Assets, then Respondents shall:
 - a. Within 5 days of notification by the Commission, rescind the Future Foam Divestiture Agreement,
 - b. Within 120 days of notification by the Commission, divest the Polyurethane Foam Assets as an ongoing business, absolutely and in good faith, at no minimum price, and grant the Shared Intellectual Property License, to an Acquirer and in a manner that receives the prior approval of the Commission, and
 - c. Set forth the manner in which they will divest the Polyurethane Foam Assets, and comply with the other provisions of this Order, in a proposed Divestiture Agreement that is submitted to the Commission for the prior approval required by this Order.
 2. The manner of the divestiture is not acceptable, then the Commission will direct the Respondents (or appoint a Divestiture Trustee) to modify the divestiture in the manner the Commission determines is necessary to satisfy the requirements of

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

- D. Respondents shall deliver the Business Information to the Acquirer as soon as practicable in a manner that ensures their completeness, accuracy and usefulness and meets the reasonable requirements of the Acquirer.
- E. No later than the Divestiture Date, Respondents shall, at their sole expense, obtain each Consent required to transfer the Polyurethane Foam Assets, including Contracts and Governmental Authorizations. Respondents may satisfy this requirement for a required Consent by certifying that the Acquirer has equivalent arrangements or has otherwise directly obtained the necessary Consent.

Provided, however, it is not a violation of this provision for Respondents not to transfer a Contract or Governmental Authorization that Respondents have no legal right to assign, transfer or sublicense (even by obtaining relevant Consents) so long as (i) prior to signing the Consent Order, Respondents inform Commission staff and the Acquirer that they cannot transfer the relevant Contract or Governmental Authorization, and (ii) Respondents assist the Acquirer in obtaining an equivalent Contract or Governmental Authorization.

- F. Respondents shall cooperate and assist the Acquirer (or any other person with whom Respondents engage in negotiations to acquire the Polyurethane Foam Assets) with a due diligence investigation of the Polyurethane Foam Assets and the Polyurethane Foam Business, including by providing sufficient and timely access to all information and employees customarily provided as part of a due diligence process.

III. Divestiture Agreement

IT IS FURTHER ORDERED that:

- A. The Divestiture Agreements shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms of a Divestiture Agreement shall constitute a violation of this Order; *provided, however,* that the Divestiture Agreements shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in a Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.
- B. Respondents shall not modify, replace, or extend the terms of a Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

IV. Transition Assistance

IT IS FURTHER ORDERED that:

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

V. Employees

IT IS FURTHER ORDERED that:

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

- b. Allow the proposed Acquirer a reasonable opportunity to interview any Polyurethane Foam Employees;
 2. Not later than 10 days after a request from a proposed Acquirer, Respondents shall provide an opportunity for the proposed Acquirer to:
 - a. Meet personally, and outside the presence or hearing of any employee or agent of Respondents, with any of the Polyurethane Foam Employees; and
 - b. Make offers of employment to any of the Polyurethane Foam Employees;
 3. Respondents shall not directly or indirectly interfere with a proposed Acquirer's offer of employment to any one or more of the Polyurethane Foam Employees, not offer any incentive to Polyurethane Foam Employees to decline employment with a proposed Acquirer, and not otherwise interfere with the recruitment of any Polyurethane Foam Employees by a proposed Acquirer;
 4. Respondents shall remove any impediments within the control of Respondents that may deter any Polyurethane Foam Employees from accepting employment with a proposed Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by a proposed Acquirer, and shall not make any counteroffer to any Polyurethane Foam Employees who receive an offer of employment from the Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;
 5. Respondents shall provide Polyurethane Foam Employees with reasonable financial incentives to continue in their positions, and as may be necessary to facilitate the employment of such Polyurethane Foam Employees by the proposed Acquirer. Such incentives shall include a continuation of all employee compensation and benefits offered by Respondents, including regularly scheduled or merit raises and bonuses, regularly scheduled vesting of pension benefits, and additional reasonable incentives as may be necessary.
- B. If, at any point within 6 months of the Divestiture Date, the Commission, in consultation with the Acquirer and the Monitor, determines in its sole discretion that the Acquirer should have the ability to interview, make offers of employment to, or hire any of Respondent Innoco or Respondent FXI's employees that are not otherwise included as Polyurethane Foam Employees, then the Commission may notify Respondents that such employees are to be designated as Polyurethane Foam Employees, and the provisions of this Paragraph V shall apply to such employees as of that notification date.
- C. Respondents shall:
 1. For a period of 1 year from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Polyurethane Foam Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

2. For a period of 2 years from the Divestiture Date, not directly or indirectly solicit or induce, or attempt to solicit or induce, any Key Employee who has accepted an offer of employment with, or who is employed by, an Acquirer to terminate his or her employment relationship with the Acquirer.

Provided, however, a violation of this Paragraph V.C will not occur if:

1. The employee's employment has been terminated by the Acquirer;
2. Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at any one or more of the employees of the Acquirer; or
3. Respondents hire an employee who has applied for employment with Respondents, provided that such application was not solicited or induced in violation of this Order.

VI. Asset Maintenance

IT IS FURTHER ORDERED that, pending divestiture of the Polyurethane Foam Assets, Respondents shall operate the Polyurethane Foam Assets in the ordinary course of business consistent with past practices, and shall:

- A. Take such actions as are necessary to maintain the full economic viability, marketability, and competitiveness of the Polyurethane Foam Assets, to minimize any risk of loss of competitive potential of the Polyurethane Foam Assets, to operate the Polyurethane Foam Assets in a manner consistent with applicable laws and regulations, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Polyurethane Foam Assets (including regular repair and maintenance efforts), except for ordinary wear and tear. Respondents shall not sell, transfer, encumber, terminate the operations of, or otherwise impair the Polyurethane Foam Assets (other than in the manner prescribed in this Order), nor take any action that lessens the full economic viability, marketability, or competitiveness of the Polyurethane Foam Assets; and
- B. Conduct or cause to be conducted the Polyurethane Foam Business in the regular and ordinary course of business and in accordance with past practice and as may be necessary to preserve the full economic viability, marketability, and competitiveness of the Polyurethane Foam Business, and shall use best efforts to preserve the relationships and goodwill with suppliers, customers, employees, governmental authorities, vendors, landlords, creditors, agents, and others having business relationships with the Polyurethane Foam Business;

Provided, however, that Respondents shall not be in violation of this Paragraph VI if Respondents take actions (i) as explicitly permitted or required by any Divestiture Agreement, or (ii) that have been requested or agreed-to by an Acquirer, in writing, and approved in advance by the Monitor (in consultation with Commission staff), in all cases

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

VII. Additional Obligations

IT IS FURTHER ORDERED that:

- A. Respondents, in consultation with the proposed Acquirer, for the purposes of ensuring an orderly transition, shall:
 - 1. Develop and implement a detailed transition plan to ensure that the commencement of the operation of the Polyurethane Foam Business by the Acquirer is not delayed or impaired by the Respondents;
 - 2. Designate employees of Respondents knowledgeable about the operation of the Polyurethane Foam Assets and Polyurethane Foam Business, who will be responsible for communicating directly with the Acquirer, and the Monitor (if one has been appointed), for the purposes of assisting in the transfer to the Acquirer of the Polyurethane Foam Assets and Polyurethane Foam Business;
 - 3. Allow the Acquirer reasonable access to all Business Information related to the Polyurethane Foam Assets and Polyurethane Foam Business and to employees who possess or are able to locate such information; and
 - 4. Establish projected timelines for accomplishing all tasks necessary to effectuate the transition to the Acquirer in an efficient and timely manner.
- B. Respondents shall:
 - 1. Not provide, disclose, or otherwise make available any Confidential Business Information to any person, except as required or permitted by this Order, the Order to Maintain Assets, or a Divestiture Agreement;
 - 2. Not use any Confidential Business Information for any reason or purpose, other than as required or permitted by this Order, the Order to Maintain Assets, or a Divestiture Agreement;
 - 3. To the extent practicable, maintain Confidential Business Information separate and apart from other data or information of the Respondents; and
 - 4. Following the Acquisition Date, ensure that Confidential Business Information is not shared with Respondents' employees engaged in polyurethane foam production or sales activities in any of the Relevant Areas, other than employees who had access to the information prior to the Acquisition Date in the normal course of business and subject to the provisions of VII.B.1 and VII.B.2 above.

Provided, however, that nothing in this Paragraph VII shall prevent Respondents from retaining and using any tangible or intangible property that Respondents retain the right to use pursuant to this Order (including Shared Intellectual Property), provided further that to the extent that the use of such property involves disclosure of Confidential

Business Information to another person, Respondents shall require such person to maintain the confidentiality of such Confidential Business Information under terms no less restrictive than Respondents' obligations under this Order.

- C. Respondents shall devise and implement measures to protect against the storage, distribution, and use of Confidential Business Information that is not permitted by this Order, the Order to Maintain Assets, or any Divestiture Agreement. These measures shall include, but not be limited to, restrictions placed on access by persons to information available or stored on any of Respondents' computers or computer networks.
- D. No later than 10 days after the Divestiture Date, and no less than annually for 3 years after the Divestiture Date, Respondents shall provide written notification of the restrictions on the use and disclosure of the Confidential Business Information by Respondents' personnel to all of its officers, directors, employees, or agents who may have possession or access to such Confidential Business Information. Respondents shall require such personnel to acknowledge in writing or electronically their receipt and understanding of these written instructions, and shall maintain custody of these written instructions and acknowledgments for inspection upon request by the Commission.
- E. Notwithstanding this Paragraph VII of this Order, and subject to the Order to Maintain Assets, Respondent may use Confidential Business Information:
 - 1. For the purpose of performing Respondents' obligations under this Order, the Order to Maintain Assets, or the Divestiture Agreements; and
 - 2. For purposes of complying with financial reporting requirements, obtaining legal advice, ensuring compliance with legal and regulatory requirements, prosecuting or defending legal claims, conducting investigations, or as otherwise required by law.

VIII. Monitor

IT IS FURTHER ORDERED that:

- A. Edward J. Buthusiem shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents, and attached as Appendix IV ("Monitor Agreement") and Non-Public Appendix IV-1 ("Monitor Compensation"). The Monitor is appointed to monitor Respondents' compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- B. No later than 1 day after the Order to Maintain Assets is issued, Respondents shall, pursuant to the Monitor Agreement, confer on the Monitor all rights, powers, and authorities necessary to permit the Monitor to monitor Respondents' compliance with the terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement, in a manner consistent with the purposes of the orders.
- C. 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 related requirements of this Order, the Order to Maintain Assets, and the Divestiture Agreement, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of the orders.
 2. The Monitor shall act in consultation with the Commission or its staff, and shall serve as an independent third party and not as an employee or agent of the Respondents or of the Commission.
 3. The Monitor shall serve until 30 days after Respondents have satisfied all obligations under Paragraph II and IV of this Order, or until such other time as may be determined by the Commission or its staff.
- D. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Respondents' personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, related to Respondents' compliance with its obligations under this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- E. Respondents shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Respondents' compliance with this Order, the Order to Maintain Assets, and the Divestiture Agreement.
- F. The Monitor shall serve, without bond or other security, at the expense of Respondents, on such reasonable and customary terms and conditions as the Commission may set. The Monitor shall have the authority to employ, at the expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities.
- G. Respondents shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor. For purposes of this Paragraph VIII.G, the term "Monitor" shall include all persons retained by the Monitor pursuant to Paragraph VIII.F of this Order.
- H. Respondents shall report to the Monitor in accordance with the requirements of this Order or the Order to Maintain Assets, and as otherwise provided in the Monitor Agreement approved by the Commission. The Monitor shall evaluate the reports submitted by the Respondents with respect to the performance of Respondents' obligations under this Order and the Order to Maintain Assets. Within 30 days from the date the Monitor receives the first such report, and every 90 days thereafter (and otherwise as the Commission or its staff may request), the Monitor shall report in writing

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

- I. Respondents may require the Monitor and each of the Monitor's consultants, accountants, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- J. The Commission may require, among other things, the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- K. If the Commission determines that the Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor:
 - 1. The Commission shall select the substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within 10 days after the notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
 - 2. Not later than 10 days after the appointment of the substitute Monitor, Respondents shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor all rights and powers necessary to permit the Monitor to monitor Respondents' compliance with the relevant terms of this Order, the Order to Maintain Assets, and the Divestiture Agreement in a manner consistent with the purposes of the orders and in consultation with the Commission.
- L. 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.
- M. The Monitor appointed pursuant to this Order may be the same person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IX. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents have not fully complied with the obligations of Paragraph II of this Order, the Commission may appoint one or more Divestiture Trustees to divest any or all of the Polyurethane Foam Assets, enter agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 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 required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph IX shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including one or more court-appointed Divestiture Trustees, pursuant to Section 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.

- B. The Commission may select one or more Divestiture Trustees, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Commission may appoint one Divestiture Trustee or separate Divestiture Trustees to divest one or more of the Polyurethane Foam Assets, enter agreements for Transition Assistance, grant the Shared Intellectual Property License, and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. Any Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within 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.
1. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement for any divestitures required by this Order 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 effectuate the divestitures required by, and satisfy the additional obligations imposed by this Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
 2. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - a. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations (including obligations to provide Transition Assistance and grant the Shared Intellectual Property License) imposed by, this Order.
 - b. The Divestiture Trustee shall have 1 year after the date the Commission approves each trust agreement described herein to accomplish the divestitures required by this Order, which shall be subject to the prior approval of the Commission. If, however, at the end of the 1 year period, the Divestiture Trustee has submitted a plan to satisfy the divestiture obligations of this Order, or believes that such obligations can be achieved within a reasonable time, the 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 period only 2 times.

- c. Subject to any demonstrated legally recognized privilege, any Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as any Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede any Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time under this Paragraph IX for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
- d. Any Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner that receives the prior approval of the Commission and to an Acquirer that receives the prior approval of the Commission as required by this Order; *provided, however*, if any Divestiture Trustee receives bona fide offers for any asset to be divested from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within 5 days after receiving notification of the Commission's approval.
- e. Any Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. Any Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. Any Divestiture Trustee shall account for all monies derived from the divestitures and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of any 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.

- f. Respondents shall indemnify any Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.
 - g. Any Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
 - h. Any Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestitures.
 - i. Respondents may require any 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.
- C. If the Commission determines that any 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 IX.
- D. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of any Divestiture Trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

X. Prior Notice

IT IS FURTHER ORDERED that:

- A. For a period of 10 years from the date this Order is issued, Respondents FXI and One Rock Capital shall not, without providing advance written notification to the Commission in the manner described in this Paragraph X, acquire any assets of, or any financial, ownership, or leasehold interest in, any facility that has operated as a polyurethane foam production facility within 12 months prior to the date of such proposed acquisition, in any Relevant Area.
- B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice,

and notification is required only of Respondents FXI and One Rock Capital and not of any other party to the transaction. Respondents FXI and One Rock Capital shall provide the Notification to the Commission at least 30 days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents FXI and One Rock Capital shall not consummate the transaction until 30 days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph X may be requested and, where appropriate, granted by letter from staff of the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph X for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

XI. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent FXI shall:
 - 1. Notify Commission staff via email at bccompliance@ftc.gov of:
 - a. The Acquisition Date, no later than 5 days after the Acquisition Date; and
 - b. The Divestiture Date, no later than 5 days after the Divestiture Date;
 - 2. Submit the complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- B. Respondents FXI and One Rock Capital shall file verified written reports (“compliance reports”) in accordance with the following:
 - 1. Respondents FXI and One Rock Capital shall submit an interim compliance report 30 days after the Order is issued, and additional interim reports every 30 days thereafter until Respondents have fully complied with the provisions of Paragraph II and IV of this Order; annual compliance reports one year after the date this Order is issued, and annually for the next 9 years on the anniversary of that date; and additional compliance reports as the Commission or its staff may request;
 - 2. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with the Order. Conclusory statements that Respondents have complied with their obligations under the Order are insufficient. Respondents

FXI and One Rock Capital shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance, a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of the Order, a description of all substantive contacts or negotiations for the divestitures and the identities of all parties contacted, and such supporting materials shall be retained and produced later if needed.

3. Respondents FXI and One Rock Capital shall verify each compliance report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at ElectronicFilings@ftc.gov and to the Compliance Division at bccompliance@ftc.gov. In addition, Respondents FXI and One Rock Capital shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.

XII. Change in Respondent

IT IS FURTHER ORDERED that Respondents FXI and One Rock Capital shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of FXI Holdings, Inc. or One Rock Capital Partners II, LP;
- B. Any proposed acquisition, merger or consolidation of FXI Holdings, Inc. or One Rock Capital Partners II, LP; or
- C. Any other change in Respondents FXI and One Rock Capital, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIII. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services

shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and

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

XIV. Purpose

IT IS FURTHER ORDERED that the purpose of this Order is to remedy the harm to competition the Commission alleged in its Complaint and ensure an Acquirer can operate the Polyurethane Foam Business in a manner equivalent in all material respects to the manner in which Respondents operated the Polyurethane Foam Business prior to the Acquisition.

XV. Term

IT IS FURTHER ORDERED that this Order shall terminate 10 years from the date it is issued.

By the Commission.

April J. Tabor
Acting Secretary

SEAL

ISSUED:

APPENDIX I

Future Foam Divestiture Agreement

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

APPENDIX II

Key Employees

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

APPENDIX III

Excluded Assets

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

APPENDIX IV
Monitor Agreement

APPENDIX IV-1

Monitor Compensation

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