

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**THE STATE OF NEVADA by its ATTORNEY
GENERAL CATHERINE CÓRTEZ MASTO**

Plaintiff,

v.

**UNIVERSAL HEALTH SERVICES, INC.,
ALAN B. MILLER, and PSYCHIATRIC
SOLUTIONS, INC.**

Defendants.

Case No.: 2:10-cv-01984

**ORDER TO HOLD SEPARATE AND
MAINTAIN ASSETS**

WHEREAS, Plaintiff State of Nevada, through its Attorney General, after having initiated an antitrust investigation of the proposed acquisition of Psychiatric Solutions, Inc. (“PSI”) by Universal Health Services, Inc. (“UHS”), an entity controlled by Alan B. Miller, hereinafter referred to collectively as Defendants, filed its Complaint on November 15, 2010 alleging violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*;

AND WHEREAS, Defendants agree that this Court has jurisdiction over them and the subject matter in this action;

AND WHEREAS, Plaintiff and Defendants, through their attorneys, have consented to the entry of a Final Judgment (“Judgment”) and this Order to Hold Separate and Maintain Assets (“Hold Separate Order”) without trial or adjudication of any issue of fact or law and without the Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the essence of the Judgment is the prompt and certain divestiture of certain assets by Defendants to ensure that competition is not substantially lessened in the market of Acute Inpatient Psychiatric Services in the Las Vegas Area (both defined therein), and to provide other relief as described therein;

AND WHEREAS, the essence of the Hold Separate Order is to preserve the assets to be divested as viable, competitive, and ongoing businesses independent of Defendants until the divestitures required by the Judgment are achieved, and as further described in Paragraph III(E) of this Hold Separate Order;

AND WHEREAS, Defendants agree to be bound by the provisions of the Judgment and this Hold Separate Order pending its approval by the Court and thereafter;

AND WHEREAS, Defendants have entered into a similar order with the Federal Trade Commission (“Commission”) in a Related Action (defined in the Judgment), to address the same allegations set forth by Plaintiff in its Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and upon consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

- A. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and under NRS 598A.060(1)(f), alleged in the Complaint as a pendent state claim.

- B. Defendant Universal Health Services, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its corporate head offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, Pennsylvania 19406-0958.
- C. Defendant Alan B. Miller is a natural person with his offices and principal place of business located at 367 South Gulph Road, PO Box 61558, King of Prussia, Pennsylvania 19406-0958.
- D. Defendant Psychiatric Solutions, Inc. is a corporation organized, existing and doing business by virtue of the laws of Delaware, with its corporate head offices and principal place of business located at 6640 Carothers Parkway, Suite 500, Franklin, Tennessee 37067.

II. DEFINITIONS

As used in this Hold Separate Order, the following definitions, and all other definitions used in the Judgment, shall apply:

- A. “Acquisition Date” means the date on which Defendant Universal Health Services, Inc., directly or indirectly, acquires a controlling interest in Defendant Psychiatric Solutions, Inc.
- B. “Judgment” means the Final Judgment entered in this action.
- C. “Hold Separate Business” means the Divestiture Assets and Divestiture Business as defined in the Judgment.
- D. “Hold Separate Employees” means all full-time employees, part-time employees, contract employees, and independent contractors, whose duties, at any time during the

- ninety (90) days preceding the Acquisition or any time after the Acquisition related or relate primarily to the Divestiture Business, a complete list of whom has been submitted to and approved by the Hold Separate Trustee and Manager, in consultation with Plaintiff, no later than three (3) days after the Acquisition.
- E. “Hold Separate Order” means this Order to Hold Separate and Maintain Assets.
- F. “Hold Separate Period” means the period during which the Hold Separate Order is in effect, which shall begin on the Acquisition Date and terminate pursuant to Section IX(A) of this Hold Separate Order.
- G. “Hold Separate Trustee” means the Person appointed pursuant to Section III of this Hold Separate Order.
- H. “Manager” means the Person or Persons appointed pursuant to Section III of this Hold Separate Order.
- I. “Support Service Employees” means the confidential list of persons provided by Defendants to Plaintiff no later than three (3) days after the Acquisition; provided, however, at any time during the Hold Separate Period, Defendants may, in consultation with the Hold Separate Trustee, modify the list of Support Service Employees.
- J. “Support Services” means assistance with respect to the operation of the Hold Separate Business, including, but not limited to, (i) human resources and administrative services such as payroll processing and employee benefits; (ii) financial accounting services; (iii) reimbursement department support (i.e., Medicare cost reports); (iv) tax-related support; (v) treasury support; (vi) insurance support;

(vii) clinical information systems support; (viii) information technology software and support services; (ix) participation in group purchasing arrangements; (x) online training programs; (xi) legal services; and (xii) federal and state regulatory compliance support.

III. HOLD SEPARATE AND MAINTAIN ASSETS

During the Hold Separate Period:

A. Defendants shall:

1. Hold the Hold Separate Business separate, apart, and independent of Defendants' other businesses and assets as required by this Hold Separate Order and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business; and
2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Managers, or the Hold Separate Trustee, except to the extent that Defendants must exercise direction and control over the Hold Separate Business as is necessary to ensure compliance with this Hold Separate Order, the Judgment, and all applicable laws.

B. Defendants shall take all actions necessary to maintain and ensure the continued maintenance of the viability, marketability and competitiveness of the Hold Separate Business, and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, and shall not sell, transfer, encumber or otherwise impair the Hold Separate Business (except as required by the Judgment).

C. Defendants shall hold the Hold Separate Business separate, apart, and independent of its other operations on the following terms and conditions:

1. At any time after Defendants sign the Agreement to Abide by Final Judgment and Order to Hold Separate and Maintain Assets, Plaintiff may appoint Robert H. Osburn as Hold Separate Trustee to monitor the operations of the Hold Separate Business and ensure that Defendants comply with their obligations as required by this Hold Separate Order and the Judgment:

a. Plaintiff shall select the Hold Separate Trustee, subject to the consent of the Defendants, which consent shall not be unreasonably withheld. If Defendants have not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice by Plaintiff's staff in this action and the Commission's staff in the Related Action to Defendants of the identity of any proposed Hold Separate Trustee, Defendants shall be deemed to have consented to the selection of the proposed trustee.

b. The Hold Separate Trustee shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Manager or Managers; maintaining the independence of the Hold Separate Business; and monitoring Defendants' compliance with their obligations pursuant to the Hold Separate Order, including, without limitation, maintaining the viability,

marketability and competitiveness of the Hold Separate Business pending divestiture.

- c. No later than three (3) days after appointment of the Hold Separate Trustee, Defendants shall execute an agreement that, subject to Plaintiff's prior approval, transfers to and confers upon the Hold Separate Trustee all rights, powers, and authority necessary to permit the Hold Separate Trustee to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Judgment and this Hold Separate Order, and shall require that the Hold Separate Trustee act in a fiduciary capacity for the benefit of Plaintiff.
- d. Subject to all applicable laws and regulations, the Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Hold Separate Business, and to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Defendants in the ordinary course of business that relate to the Hold Separate Business. Defendants shall develop such financial or other information as the Hold Separate Trustee may reasonably request and shall cooperate with the Hold Separate Trustee.
- e. Defendants shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Defendants' compliance with this Hold Separate Order and the Judgment, or otherwise to perform his or her

duties and responsibilities consistent with the terms of this Hold Separate Order.

- f. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- g. Plaintiff may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from Plaintiff in connection with performance of the Hold Separate Trustee's duties.
- h. Defendants may require the Hold Separate Trustee and each of the Hold Separate Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; provided, however, that such agreement shall not restrict the Hold Separate Trustee from providing any information to Plaintiff.
- i. The Hold Separate Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on reasonable and customary terms commensurate with the person's experience and responsibilities.
- j. Defendants shall indemnify the Hold Separate Trustee and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate

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 liabilities, losses, damages, claims, or expenses result from gross negligence or willful misconduct by the Hold Separate Trustee.

- k. Thirty (30) days after the Acquisition Date, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to Plaintiff concerning the efforts to accomplish the purposes of this Hold Separate Order and Defendants' compliance with their obligations under the Hold Separate Order and the Judgment. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the Hold Separate Business is meeting (or exceeding) its projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- l. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, Plaintiff may appoint a substitute Hold Separate Trustee consistent with the terms of this Hold Separate Order.
- m. The Hold Separate Trustee shall serve until the day after the Closing Date; provided, however, that Plaintiff may extend or modify this period as may

be necessary or appropriate to accomplish the purposes of the Judgment and this Hold Separate Order.

2. No later than five (5) days after the Acquisition Date, Defendants shall appoint a Manager or Managers, approved by the Hold Separate Trustee in consultation with Plaintiff, from among the current employees of the Hold Separate Business to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice:
 - a. Each Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Hold Separate Business independently of the management of Defendants and their other businesses. No Manager shall be involved, in any way, in the operations of the other businesses of Defendants during the term of this Hold Separate Order.
 - b. Each Manager shall have the authority to employ, at the cost and expense of Defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Manager's duties and responsibilities. Nothing contained herein shall preclude any of the Managers from contacting or communicating directly with Plaintiff's staff either at the request of Plaintiff's staff or in the discretion of the Manager.
 - c. No later than three (3) days after appointment of a Manager, Defendants shall enter into a management agreement with that Manager that, subject to the prior approval of the Hold Separate Trustee, in consultation with

Plaintiff's staff, transfers all rights, powers, and authority necessary to permit that Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order, in a manner consistent with the purposes of the Judgment and this Hold Separate Order.

- d. No Manager shall make material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Trustee, in consultation with Plaintiff's staff.
- e. Each Manager shall have the authority, in consultation with the Hold Separate Trustee, to remove Hold Separate Employees and replace them with others of similar experience or skills. If any Hold Separate Employee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Defendants to, and Defendants shall, appoint a substitute Person, which Person the Manager shall have the right to approve.
- f. In addition to Hold Separate Employees, each Manager may, in consultation with the Hold Separate Trustee, employ such Persons as are reasonably necessary to assist the Manager in managing the Hold Separate Business.
- g. Defendants shall provide each Manager with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled

raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the Hold Separate Business' viability, marketability and competitiveness until the Closing Date, and as may otherwise be necessary to achieve the purposes of the Judgment and this Hold Separate Order.

- h. The Hold Separate Trustee shall be permitted, in consultation with Plaintiff, to remove a Manager for cause. Within three (3) days of such removal, Defendants shall appoint a replacement Manager on the same terms and conditions as provided in this Hold Separate Order. In the event that a Manager voluntarily ceases to act as a Manager, then Defendants shall appoint a substitute Manager within three (3) days on the same terms and conditions as provided in this Hold Separate Order.
- i. Each Manager shall serve, without bond or other security, at the cost and expense of Defendants, on reasonable and customary terms commensurate with the person's experience and responsibilities.
- j. Defendants shall indemnify each Manager and hold him or her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Manager'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 liabilities, losses, damages,

claims, or expenses result from gross negligence or willful misconduct by the Manager.

3. The Hold Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business. To the extent that such employees leave or have left the Hold Separate Business prior to the Closing Date of the Divestiture Assets, the Manager, in consultation with the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. Defendants shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate Trustee:
 - a. To operate the Hold Separate Business at least as it is currently operated (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Acquisition Date;
 - b. To perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;
 - c. To carry on during the Hold Separate Period such capital projects and physical plant improvements as are already under way for which all necessary regulatory and legal approvals have been obtained, including but not limited to existing or planned renovation, remodeling, and expansion projects; and

- d. To maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Judgment and in consultation with the Hold Separate Trustee, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

5. In connection with Support Services not included within the Hold Separate Business:

- a. Defendants shall continue to provide, or offer to provide, the same Support Services to the Hold Separate Business as are being provided to the Hold Separate Business by Defendants as of the date the Agreement to Abide by Final Judgment and Order to Hold Separate and Maintain Assets is signed by Defendants;
- b. For Support Services that Defendants provided to the Hold Separate Business as of the date the Agreement to Abide by Final Judgment and Order to Hold Separate and Maintain Assets is signed by Defendants, Defendants may charge no more than the same price, if any, charged by Defendants for such Support Services as of the date the Agreement to

Abide by Final Judgment and Order to Hold Separate and Maintain Assets
is signed by Defendants;

- c. For any other Support Services that Defendants may provide to the Hold Separate Business, Defendants may charge no more than Defendants' Direct Cost for the same or similar Support Services;
 - d. Support Service Employees must retain and maintain all Confidential Business Information of the Hold Separate Business on a confidential basis, and, except as is permitted by the Judgment and this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves the management or operation of any of Defendants' businesses or activities other than the Hold Separate Business. As required by Paragraph III(C)(6) below, Support Service Employees shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Hold Separate Business, except as permitted by the Judgment and this Hold Separate Order; and
 - e. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Manager and in consultation with the Hold Separate Trustee, the ability to acquire Support Services from Third Parties.
6. Defendants shall cause the Hold Separate Trustee, each Manager, and each of Defendants' employees (excluding those employed in the Hold Separate

Business) having access to Confidential Business Information of or pertaining to the Hold Separate Business to submit to Plaintiff a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Confidential Business Information of or pertaining to the Hold Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order or the Judgment, such Persons shall be prohibited from disclosing, providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other Person whose employment involves the management or operations of any of Defendants' businesses or activities other than the Hold Separate Business.

7. Except for the Managers and Hold Separate Employees, and except to the extent provided in this Hold Separate Order, Defendants shall not permit any other of its employees, officers, or directors to be involved in the operations of the Hold Separate Business.
8. Defendants' employees (excluding the Hold Separate Employees and Support Service Employees) shall not receive, or have access to, or use or continue to use any Confidential Business Information except
 - a. As required by law; and
 - b. To the extent necessary information is exchanged
 - i. In the course of consummating the Acquisition;

- ii. In negotiating agreements to divest assets pursuant to the Judgment and engaging in related due diligence;
- iii. In complying with or as permitted by this Hold Separate Order or the Judgment
- iv. In overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Hold Separate Business and the integrity of the financial controls of the Hold Separate Business;
- v. In defending legal claims, investigations or enforcement actions threatened or brought against or related to the Hold Separate Business; or
- vi. In obtaining legal advice.

Nor shall any Manager or any Hold Separate Employees receive or have access to, or use or continue to use, any confidential business information relating to Defendants' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business. Notwithstanding the above, Defendants may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Defendants to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities

laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Judgment. Any such information that is obtained pursuant to this Paragraph shall be used only for the purposes set forth in this Paragraph.

9. Defendants and the Hold Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Defendants, to audit Defendants' networks and systems to verify compliance with this Hold Separate Order.
10. No later than ten (10) days after the Acquisition Date, Defendants shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.
11. No later than ten (10) days after the Acquisition Date, Defendants shall circulate to Hold Separate Employees, and to persons who are employed in Defendants' businesses that compete with the Hold Separate Business, a notice of this Hold Separate Order and the Judgment, in a form approved by the Hold Separate Trustee in consultation with Plaintiff's staff.

- D. Defendants shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation and prevent any diminution of the viability, marketability and competitiveness of the Divestiture Assets until the applicable Divestiture Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.
- E. The purpose of this Hold Separate Order is to: (1) preserve the assets and businesses within the Hold Separate Business as viable, competitive, and ongoing businesses independent of Defendants until the divestitures required by the Judgment are achieved; (2) assure that no Confidential Business Information is exchanged between Defendants and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order and the Judgment; (3) prevent interim harm to competition pending the divestiture and other relief; and (4) maintain the full economic viability, marketability and competitiveness of the Divestiture Assets, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

IV. CONFIDENTIAL BUSINESS INFORMATION

- A. Defendants shall not use, solicit, or access, directly or indirectly, any Confidential Business Information, and shall not disclose, provide, discuss, exchange, circulate,

convey, or otherwise furnish such Confidential Business Information, directly or indirectly, to or with any Person other than:

1. As necessary to comply with the requirements of the Judgment and this Hold Separate Order;
 2. Subject to an appropriate confidentiality agreement, a Person that has shown an interest in acquiring the Divestiture Business and that UHS has reason to believe may be qualified to acquire the Divestiture Business;
 3. A Prospective Acquirer or Acquirer, or other Persons specifically authorized by such Prospective Acquirer or Acquirer to receive such information, regarding the Divestiture Business;
 4. Pursuant to a Divestiture Agreement;
 5. To enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or
 6. To comply with applicable law, regulations and other legal requirements.
- B. No later than five (5) days after the Acquisition, Defendants shall provide written notification of the restrictions, prohibitions and requirements of this Section and Section IV of the Judgment to all of Defendants' employees, agents, and representatives located in the Las Vegas Area or, even if located outside the Las Vegas Area, to Defendants' employees, agents, and representatives who had or have responsibilities in or relating to the Las Vegas Area or who had or have access to or possession, custody or control of any Confidential Business Information. Defendants may provide such notification by e-mail with return receipt requested or similar

transmission, and must keep a file of any receipts or acknowledgments for one (1) year after the respective Closing Date. Defendants shall provide a copy of such notification to the Acquirer. Defendants shall maintain complete records of all such notifications at Defendants' corporate headquarters and shall provide an officer's certification to Plaintiff, stating that such acknowledgment program has been implemented and is being complied with. Defendants shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Defendants' personnel.

C. Defendants shall:

1. No later than fourteen (14) days after the Acquisition, obtain, as a condition of continued employment post-divestiture, from each of Defendants' employees, agents, and representatives located in the Las Vegas Area or, even if located outside the Las Vegas Area, from each of Defendants' employees, agents, and representatives who had or have responsibilities in or relating to the Las Vegas Area or who had or have access to or possession, custody or control of any Confidential Business Information an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of the Judgment and this Hold Separate Order; and
2. No later than thirty (30) days after the Acquisition, institute procedures and requirements and take such actions as are necessary to ensure that Defendants' personnel comply with the restrictions, prohibitions and requirements of this Section, including all actions that Defendants would take to protect their own trade secrets and confidential information.

V. RELEVANT EMPLOYEES

- A. Defendants shall, no later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:
1. Name, job title or position, date of hire and effective service date;
 2. A specific description of the employee's responsibilities;
 3. The base salary or current wages;
 4. The most recent bonus paid, aggregate annual compensation for Defendants' last fiscal year and current target or guaranteed bonus, if any;
 5. Employment status (i.e., active or on leave or disability; full-time or part-time);
 6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and
 7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.
- B. Defendants shall, within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Defendant, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees.

- C. Defendants shall not interfere, directly or indirectly with the hiring or employment by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer.
- D. Defendants shall remove any impediments within the control of Defendants that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Defendants that may affect the ability or incentive of such individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; provided, however, that nothing in this Hold Separate Order shall be construed to require Defendants to terminate the employment of any employee or prevent Defendants from continuing the employment of any employee.
- E. Defendants shall provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan) offered by Defendants.
- F. Defendants shall not, for a period of two (2) years following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant

Employees to terminate his or her employment with the Acquirer; provided however, that Defendants may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or
2. Hire Relevant Employees who apply for employment with Defendants, as long as such employees were not solicited by Defendants in violation of this Section; provided further however, that this Section shall not prohibit Defendants from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Defendants 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 employee's employment has been terminated by the Acquirer.

VI. COMPLIANCE AND MONITORING

- A. Within thirty (30) days after entry of this Hold Separate Order, and every thirty (30) days thereafter until this Hold Separate Order terminates, Defendants shall submit to Plaintiff a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Defendants 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 this Hold Separate Order.

- B. All Compliance and Monitoring provisions set forth in Section XI of the Judgment shall also be available for this Hold Separate Order, as if such Compliance and Monitoring provisions are fully set forth herein.

VII. VIOLATIONS AND ENFORCEMENT

A violation of this Hold Separate Order shall also be a violation of the Judgment. All penalty provisions and remedies available to Plaintiff set forth in the Judgment shall apply to any conduct in violation of this Hold Separate Order, as if such penalties and remedies are fully set forth herein, except that Plaintiff is not bound by Paragraphs XII(F) and (G) of the Judgment if it seeks equitable and injunctive relief from this Court on an emergency basis in response to violations of this Hold Separate Order.

VIII. RELATED ACTION

Consistent with Plaintiff's enforcement policy, Plaintiff will undertake to discuss matters with the Commission relating to decisions regarding compliance reports, or the selection, appointment and replacement of trustees, before such decisions are made by Plaintiff. If there is a departure between Plaintiff and the Commission regarding such decisions, Plaintiff shall notify Defendants and meet and confer with Defendants before implementing such decision.

IX. GENERAL PROVISIONS

- A. This Hold Separate Order shall terminate the day after the divestiture required by the Judgment is completed; provided, however, that when the Divestiture Assets that are included within the Hold Separate Business are divested pursuant to the applicable paragraphs in the Judgment, those Divestiture Assets shall cease to be covered by this Hold Separate Order.

- B. This Court retains jurisdiction to enable either Party to this Hold Separate Order to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Hold Separate Order, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions. Except as specified in Section VII, the Parties shall meet and confer on the matter(s) that would be presented to the Court for modification, enforcement, or punishment.
- C. If any part of this Hold Separate Order is hereafter adjudged by this Court to be unenforceable, the remaining provisions of this Hold Separate Order shall stay in full force and effect.

BEFORE THIS COURT, the Court finds that entry of this Hold Separate Order is fair, equitable and in the public interest.

IT IS SO ORDERED:


UNITED STATES DISTRICT JUDGE

DATED: December 22, 2010