

B&W shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of BAT and B&W, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If BAT and B&W have not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to BAT and B&W of the identity of any proposed trustee, BAT and B&W shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

3. Within twenty (20) days after appointment of the trustee, BAT and B&W shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approve the trust agreement described in Paragraph III B. 3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets or to any other relevant information, as the trustee may request, and shall take all reasonable steps to ensure that the confidentiality is maintained of matters and documents so designated by either of the respondents. BAT and B&W shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. BAT and B&W shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by BAT and

B&W shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract (which may include provision for the contract manufacture of cigarettes) that is submitted to the Commission, subject to BAT's and B&W's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquirer as set out in Paragraph II B. of this order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity selected by BAT and B&W from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of BAT and B&W, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of BAT and B&W, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the BAT and B&W, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

8. BAT and B&W shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claims, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or

bad faith by the trustee. BAT and B&W shall be responsible for the defense of any and all claims against the trustee under this subsection and the trustee shall do and omit nothing which may prejudice such defense.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III A. of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Reidsville Assets, the ATC Value Brands Assets and the B&W Brand Assets.

12. The trustee shall report in writing to BAT and B&W and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

13. The trustee shall note, in his or her recommendation to the Commission, whether the proposed acquirer, or any other entity controlling or commonly controlled by the proposed acquirer, has, directly or indirectly, in any jurisdiction in the world and at any time within the last five years, had goods that it manufactured or supplied seized, impounded or destroyed by any authority pursuant to a claim of infringement of any intellectual property or other right over or in respect to those goods.

IV

It is further ordered That, for a period of ten (10) years from the date this order becomes final, BAT and B&W shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the manufacture in the United States of cigarettes for consumption in the United States, or

B. Acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale in the United States of cigarettes.

Provided, however, that this Paragraph IV shall not apply to