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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

In the Matter of	)	
NOVARTIS AG,	)	**Docket No. C-4296**
a corporation.	)	

DECISION AND ORDER
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Respondent Novartis AG ("Novartis" or "Respondent") of a majority of the outstanding voting shares of Alcon, Inc., and Respondent having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and an Order to Maintain Assets, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent Novartis is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its principal executive offices located at Lichtstrasse 35, CH-4056 Basel, Switzerland, and the address of its United States subsidiary, Novartis Pharmaceuticals Corporation (a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware), located at 59 Route 10, East Hanover, New Jersey 07936.

2. Alcon, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its principal executive offices located at Bösch 69, P.O. Box 62, Hünenberg, Switzerland, and the principal offices of its United States subsidiary, Alcon Laboratories, Inc. (a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware), located at 6201 South Freeway, Fort Worth, Texas 76134-2099.

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

ORDER

I.

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

A. "Novartis" or "Respondent" means Novartis AG, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Novartis AG, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the Acquisition Date, the term "Novartis" shall include Alcon.

B. "Alcon" means Alcon, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Alcon, Inc.

C. "Commission" means the Federal Trade Commission.

D. "Acquirer" means the following:

1. a Person specified by name in this Order to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order and that has been approved by the Commission to accomplish the requirements of this Order in connection with the Commission's determination to make this Order final; or

2. a Person approved by the Commission to acquire particular assets or rights that Respondent is required to assign, grant, license, divest, transfer, deliver, or otherwise convey pursuant to this Order.

E. "Acquisition" means Respondent Novartis's acquisition of shares of the common stock of Alcon from Nestlé. The "Acquisition" is pursuant to a call option contained in the Purchase and Option Agreement dated as of April 6, 2008, by and between Novartis and Nestlé.

F. "Acquisition Date" means the date on which Respondent Novartis acquires, directly or indirectly, fifty (50) percent or more of the voting rights in Alcon.

G. "Agency(ies)" means any government regulatory authority or authorities in the world responsible for granting approval(s), clearance(s), qualification(s), license(s), or permit(s) for any aspect of the research, Development, manufacture, marketing, distribution, or sale of a Product. The term "Agency" includes, without limitation, the United States Food and Drug Administration ("FDA").

H. "Application(s)" means all of the following: "New Drug Application" ("NDA"), "Abbreviated New Drug Application" ("ANDA"), "Supplemental New Drug Application" ("SNDA"), or "Marketing Authorization Application" ("MAA"), the applications for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 314, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondent and the FDA related thereto. The term "Application" also includes an "Investigational New Drug Application" ("IND") for a Product filed or to be filed with the FDA pursuant to 21 C.F.R. Part 312, and all supplements, amendments, and revisions thereto, any preparatory work, drafts and data necessary for the preparation thereof, and all correspondence between Respondent and the FDA related thereto.

I. "Bausch & Lomb" means Bausch & Lomb Incorporated, a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal executive offices located at One Bausch & Lomb Place, Rochester, NY 14604-2701.

J. "cGMP" means current Good Manufacturing Practice as set forth in the United States Federal Food, Drug, and Cosmetic Act, as amended, and includes all rules and regulations promulgated by the FDA thereunder.

K. "Clinical Trial(s)" means a controlled study in humans of the safety or efficacy of a Product, and includes, without limitation, such clinical trials as are designed to support expanded labeling or to satisfy the requirements of an Agency in connection with any Product Approval and any other human study used in research and Development of a Product.

L. "Closing Date" means the date on which Respondent (or a Divestiture Trustee) consummates a transaction to assign, grant, license, divest, transfer, deliver, or otherwise convey the Miotics Product Assets.

M. "Component(s)" means any active ingredient, adjuvant, and/or other component of a Product that is intended to affect the efficacy or safety of an active ingredient of such Product; *provided however*, that Respondent may retain the right, concurrently with the Acquirer's rights, to use adjuvants and excipients that are used in both the Miotics Products and Retained Products.

N. "Confidential Business Information" means all information owned by, or in the possession or control of, the Respondent that is not in the public domain and that is directly related to the research, Development, manufacture, marketing, commercialization, importation, exportation, cost, supply, sales, sales support, or use of the Miotics Products;

provided however, that the restrictions contained in this Order regarding the Respondent's use, conveyance, provision, or disclosure of "Confidential Business Information" shall not apply to the following:

1. information that subsequently falls within the public domain through no violation of this Order or breach of confidentiality or non-disclosure agreement with respect to such information by Respondent;

2. information related to the Miotics Products that Alcon obtained without the assistance of Respondent Novartis prior to the Acquisition;

3. information that is required by Law to be publicly disclosed;

4. information that does not directly relate to the Miotics Products;

5. information related to Retained Products

6. information relating to either Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of pharmaceutical Products that does not discuss the Miotics Products with particularity;

7. information specifically excluded from the Miotics Product Assets; or

8. information that is protected by the attorney work product, attorney-client, joint defense or other privilege prepared in connection with the Acquisition and relating to any United States, state, or foreign antitrust or competition Laws.

O. "Contract Manufacture" means:

1. to manufacture a Miotics Product, or ingredient or Component thereof, or

2. to supply or provide any part of the manufacturing process of a Miotics Product including, without limitation, the finish, fill, and/or packaging of a Miotics Product.

P. "Contract Manufacture Products and Services" means:

1. any Miotics Product, ingredient or Component thereof, and

2. any finish, fill, and/or packaging for a Miotics Product,

for which any part of the manufacturing process is performed by the Respondent prior to the Closing Date at a facility that is not subject to divestiture pursuant to this Order.

Q. "Copyrights" means rights to all original works of authorship of any kind directly related to the specified Product(s) and any registrations and applications for registrations thereof within the Geographic Territory, including, but not limited to, the following: all such rights with respect to all promotional materials for healthcare providers, all promotional materials for patients, and educational materials for the sales force; copyrights in all preclinical, clinical and process development data and reports relating to the research and Development of the specified Product(s) or of any materials used in the research, Development, manufacture, marketing or sale of the specified Product(s), including all copyrights in raw data relating to Clinical Trials of the specified Product(s), all case report forms relating thereto and all statistical programs developed (or modified in a manner material to the use or function thereof (other than through user references)) to analyze clinical data, all market research data, market intelligence reports and statistical programs (if any) used for marketing and sales research; all copyrights in customer information, promotional and marketing materials, the specified Product(s) sales forecasting models, medical education materials, sales training materials, and advertising and display materials; all records relating to employees who accept employment with the Acquirer (excluding any personnel records the transfer of which is prohibited by applicable Law); all copyrights in records, including customer lists, sales force call activity reports, vendor lists, sales data, reimbursement data, speaker lists, manufacturing records, manufacturing processes, and supplier lists; all copyrights in data contained in laboratory notebooks relating to the specified Product(s) or relating to its biology; all copyrights in adverse experience reports and files related thereto (including source documentation) and all copyrights in periodic adverse experience reports and all data contained in electronic databases relating to adverse experience reports and periodic adverse experience reports; all copyrights in analytical and quality control data; and all correspondence with the FDA.

R. "Designee" means any Person other than Respondent Novartis or Alcon that has been designated by the Acquirer to manufacture a Miotics Product for that Acquirer.

S. "Development" means all preclinical and clinical drug development activities (including formulation), including test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control development, statistical analysis and report writing, conducting Clinical Trials for the purpose of obtaining any and all approvals, licenses, registrations or authorizations from any Agency necessary for the manufacture, use, storage, import, export, transport, promotion, marketing, and sale of a Product (including any government price or reimbursement approvals), Product approval and registration, and regulatory affairs related to the foregoing. "Develop" means to engage in Development.

T. "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 Respondent's employees' labor shall not exceed the average hourly wage rate for such employee;

provided, however, in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement, "Direct Cost" means such cost as is provided in such Remedial Agreement.

U. "Divestiture Trustee" means the trustee appointed by the Commission pursuant to the relevant provisions of this Order.

V. "Domain Name" means the domain name(s), universal resource locators ("URL"), and registration(s) thereof, issued by any Person or authority that issues and maintains the domain name registration. "Domain Name" shall not include any Trademark or service mark rights to such domain names other than the rights to those Trademarks included in the Product Intellectual Property.

W. "Drug Master Files" means the information submitted to the FDA as described in 21 C.F.R. Part 314.420 related to a Product.

X. "Freedom to Operate Searches" means all studies, analyses, reports and legal opinions that were prepared for the purposes of identifying, evaluating or analyzing potential patent barriers to the commercialization of the Miotics Products and related technologies.

Y. "Geographic Territory" shall mean the United States of America (including all of the territories within its jurisdiction or control) and Canada unless otherwise specified.

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

AA. "High Volume Account(s)" means any retailer, wholesaler or distributor whose annual and/or projected annual aggregate purchase amounts (on a company-wide level), in units or in dollars, of a Miotics Product in the United States from the Respondent was, or is projected to be among the top twenty highest of such purchase amounts by the Respondent's U.S. customers on any of the following dates: (1) the end of the last quarter that immediately preceded the date of the public announcement of the proposed Acquisition; (2) the end of the last quarter that immediately preceded the Acquisition Date; (3) the end of the last quarter that immediately preceded the Closing Date; or (4) the end of the last quarter following the Acquisition and/or the Closing Date.

BB. "Interim Monitor" means any monitor appointed pursuant to Paragraph III of this Order or Paragraph III of the related Order to Maintain Assets.

CC. "Law" means all laws, statutes, rules, regulations, ordinances, and other pronouncements by any Government Entity having the effect of law.

DD. "Miotics Product(s)" means all Products that are intraocular solutions containing the active pharmaceutical ingredient generically known as acetylcholine together with any salts, esters, metabolites, derivatives, isomers, hydrates, solvates, ethers, quaternary amines, polymorphs and prodrugs thereof offered by Respondent Novartis for sale in the United States of America, including without limitation, under the brand name Miochol®-E, during the one (1) year period immediately preceding the Acquisition Date. The term "Miotics Product(s)" excludes any Product offered by Alcon prior to the Acquisition Date.

EE. "Miotics Product Assets" means all of the Respondent's rights, title and interest in and to all assets related to the Respondent's business throughout the World related to the Miotics Products to the extent legally transferable, including the research, Development, manufacture, distribution, marketing, and sale of the Miotics Products, including, without limitation, the following assets related to the Miotics Products:

1. all Product Intellectual Property;

2. all Freedom to Operate Searches;

3. all Product Improvements;

4. all Product Approvals;

5. all Product Manufacturing Technology;

6. all Product Marketing Materials;

7. all Website(s);

8. a list of all of the NDC Numbers used for Miotics Products, and rights, to the extent permitted by Law:

    a. to require Respondent to cease and desist from using the NDC Numbers in the sale or marketing of Products other than with respect to returns, rebates, allowances, and adjustments for Miotics Products sold prior to the Acquisition Date;

    b. to prohibit Respondent from seeking from any customer any type of cross-referencing of such NDC Numbers with any Retained Product(s);

    c. to seek to change any cross-referencing by a customer of such NDC Numbers with the Retained Product(s) (including the right to receive notification from Respondent of any such cross-referencing that is discovered by Respondent);

    d. to seek cross-referencing from a customer of such NDC Numbers with the Acquirer's NDC Numbers;

    e. to approve the timing of Respondent's cessation of use of such NDC Numbers in the sale or marketing of Products other than with respect to returns, rebates, allowances, and adjustments for Miotics Products sold prior to the Acquisition Date; and

    f. to approve any notification(s) from Respondent to any customer(s) regarding the use or cessation of use of such NDC numbers by Respondent prior to such notification(s) being disseminated to the customer(s);

9. all rights to all of Respondent's Applications;

10. Right of Reference or Use to the Drug Master Files related to the above-described Applications including, but not limited to, the pharmacology and toxicology data contained in all Application(s);

11. all Product Development Reports;

12. at the Acquirer's option, all Product Assumed Contracts;

13. all strategic safety programs submitted to the FDA that are designed to decrease product risk by using one or more interventions or tools beyond the package insert;

14. all patient registries and any other systematic active post-marketing surveillance program to collect patient data, laboratory data and identification information required to be maintained by the FDA to facilitate the investigation of adverse effects;

15. a list of all customers and/or targeted customers for the Miotics Product(s) and the net sales (in either units or dollars) of the Miotics Products to such customers on either an

annual, quarterly, or monthly basis including, but not limited to, a separate list specifying the above-described information for the High Volume Accounts and including the name of the employee(s) for each High Volume Account that is or has been responsible for the purchase of the Miotics Products on behalf of the High Volume Account and his or her business contact information;

16. at the Acquirer's option and to the extent approved by the Commission in the relevant Remedial Agreement, all inventory in existence as of the Closing Date including, but not limited to, raw materials, packaging materials, work-in-process and finished goods;

17. copies of all unfilled customer purchase orders for the Miotics Products as of the Closing Date, to be provided to the Acquirer not later than five (5) days after the Closing Date;

18. at the Acquirer's option, subject to any rights of the customer, all unfilled customer purchase orders for the Miotics Products; and

19. all of the Respondent's books, records, and files directly related to the foregoing or to the Miotics Products;

provided, however, that the term "Miotics Product Assets" shall not include: (1) documents relating to the Respondent's general business strategies or practices relating to research, Development, manufacture, marketing or sales of pharmaceutical Products, where such documents do not discuss with particularity the Miotics Products; (2) administrative, financial, and accounting records; (3) quality control records that are determined by the Interim Monitor or the Acquirer not to be material to the manufacture of the Miotics Products; (4) any real estate and the buildings and other permanent structures located on such real estate; (5) Product Manufacturing Technology related to both the Miotics Products and the Retained Products; and (6) Product Licensed Intellectual Property.

provided further, *however*, that in cases in which documents or other materials included in the Miotics Product Assets contain information: (1) that relates both to the Miotics Products and to other Products or businesses of the Respondent and cannot be segregated in a manner that preserves the usefulness of the information as it relates to the Miotics Products; or (2) for which the Respondent has a legal obligation to retain the original copies, the Respondent shall be required to provide only copies or relevant excerpts of the documents and materials containing this information. In instances where such copies are provided to the Acquirer, the Respondent shall provide the Acquirer access to original documents under circumstances where copies of documents are insufficient for evidentiary or regulatory purposes. The purpose of this proviso is to ensure that Respondent provides the Acquirer with the above-described information without requiring Respondent completely to divest itself of information that, in content, also relates to Retained Product(s).

FF. "Miotics Product Core Employee(s)" means the Product Research and Development Employees and the Product Manufacturing Employees related to the Miotics Products.

GG. "Miotics Product Divestiture Agreement(s)" means the following agreements:

1. "Asset Purchase Agreement" between Novartis Pharmaceuticals Corporation, Novartis Pharma AG and Bausch & Lomb Incorporated, dated as of July 21, 2010, and all amendments, exhibits, attachments, agreements, and schedules thereto;

2. "Supply Agreement" between Novartis Pharma AG and Bausch & Lomb Incorporated in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto;

3. "Quality Agreement" in the form attached to the Supply Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto;

4. "Transitional Technical Services Agreement" between Novartis Pharm AG and Bausch & Lomb Incorporated in the form attached to the Asset Purchase Agreement, and all amendments, exhibits, attachments, agreements, and schedules thereto;

provided, however, the term "Miotics Product Divestiture Agreements" excludes those provisions of any agreement that relate exclusively to the allocation of the purchase price for the purposes of taxes.

The Miotics Product Divestiture Agreements are attached to this Order and contained in non-public Appendix II.A.

HH. "Miotics Product Licenses" means a perpetual, non-exclusive, fully paid-up and royalty-free license(s) with rights to sublicense to: (1) all Product Licensed Intellectual Property and (2) all Product Manufacturing Technology that relates to both the Miotics Products and the Retained Products including, without limitation, general manufacturing know-how, for all of the following purposes:

1. to research and Develop the Miotics Products for marketing, distribution or sale within the United States of America;

2. to use, make, have made, distribute, offer for sale, promote, advertise, or sell the Miotics Products within the United States of America;

3. to import or export the Miotics Products to or from the United States of America to the extent related to the marketing, distribution or sale of the Miotics Products; and

4. to have the Miotics Products made anywhere in the World for distribution or sale within, or import into the United States of America;

provided further however, that for any Product Licensed Intellectual Property that is the subject of a license from a Third Party to the Respondent, the scope of the rights granted hereunder shall only be required to be equal to the scope of the rights granted by the Third Party to the Respondent.

II. "Miotics Product Releasee(s)" means the Acquirer or any Person controlled by or under common control with the Acquirer, or any licensees, sublicensees, manufacturers, suppliers, distributors, and customers of the Acquirer, or of Acquirer-affiliated entities.

JJ. "NDC Numbers" means the National Drug Code numbers, including both the labeler code assigned by the FDA and the additional numbers assigned by an Application holder as a product code for a specific Product.

KK. "Nestlé" means Nestlé S.A., a corporation organized, existing and doing business under and by virtue of the laws of the Swiss Confederation, with its principal executive offices located at Avenue Nestlé 55, CH-1800 Vevey, Switzerland; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates in each case controlled by Nestlé.

LL. "Order Date" means the date on which this Decision and Order becomes final.

MM. "Order to Maintain Assets" means the Order to Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.

NN. "Patent(s)" means all patents, patent applications, including provisional patent applications, invention disclosures, certificates of invention and applications for certificates of invention and statutory invention registrations, in each case existing as of the Closing Date (*except* where this Order specifies a different time), and includes all reissues, additions, divisions, continuations, continuations-in-part, supplementary protection certificates, extensions and reexaminations thereof, all inventions disclosed therein, and all rights therein provided by international treaties and conventions, related to any Product of or owned by Respondent as of the Closing Date (*except* where this Order specifies a different time).

OO. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, or other business or Government Entity, and any subsidiaries, divisions, groups or affiliates thereof.

PP. "Product(s)" means any pharmaceutical, biological, or genetic composition containing any formulation or dosage of a compound referenced as its pharmaceutically, biologically, or genetically active ingredient.

QQ. "Product Approval(s)" means any approvals, registrations, permits, licenses, consents, authorizations, and other approvals, and pending applications and requests therefor, required by applicable Agencies related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the specified Product(s) within

the Geographic Territory, and includes, without limitation, all approvals, registrations, licenses or authorizations granted in connection with any Application.

RR. "Product Assumed Contracts" means all of the following contracts or agreements (copies of each such contract to be provided to the Acquirer on or before the Closing Date and segregated in a manner that clearly identifies the purpose(s) of each such contract) that are related to the research, Development, manufacture, distribution, finishing, packaging, marketing, sale, storage or transport of the Miotics Product(s) within the Geographic Territory:

1. that make specific reference to the Miotics Product(s) and pursuant to which any Third Party is obligated to purchase, or has the option to purchase without further negotiation of terms, the Miotics Product(s) from the Respondent unless such contract applies generally to the Respondent's sales of Products to that Third Party;

2. pursuant to which Respondent purchases the active pharmaceutical ingredient(s), Component, or other necessary ingredient(s) or had planned to purchase the active pharmaceutical ingredient(s), Component or other necessary ingredient(s) from any Third Party for use in connection with the manufacture of the Miotics Product(s);

3. relating to any Clinical Trials involving the Miotics Product(s);

4. with universities or other research institutions for the use of the Miotics Product(s) in scientific research;

5. relating to the particularized marketing of the Miotics Product(s) or educational matters relating solely to the Miotics Product(s);

6. pursuant to which a Third Party manufactures or packages the Miotics Product(s) on behalf of the Respondent;

7. pursuant to which a Third Party provides the Product Manufacturing Technology related to the Miotics Product(s) to the Respondent;

8. pursuant to which a Third Party is licensed by Respondent to use the Product Manufacturing Technology related to the Miotics Product(s);

9. constituting confidentiality agreements pertaining to the Miotics Product(s) *except* such agreements that Respondent is specifically required to enforce on behalf of the Acquirer pursuant to a Remedial Agreement;

10. involving any royalty, licensing, or similar arrangement involving the Miotics Product(s);

11. pursuant to which a Third Party provides any specialized services necessary to the research, Development, manufacture or distribution of the Miotics Products to the Respondent including, but not limited to, consultation arrangements; and/or

12. pursuant to which any Third Party collaborates with Respondent in the performance of research, Development, marketing, distribution or selling of the Miotics Product(s) or the Miotics Product(s) business;

provided, however, that where any such contract or agreement also relates to a Retained Product(s), Respondent shall assign the Acquirer all such rights under the contract or agreement as are related to the Miotics Product(s), but concurrently may retain similar rights for the purposes of the Retained Product(s).

SS. "Product Development Reports" means:

1. Pharmacokinetic study reports related to the Miotics Product(s);

2. Bioavailability study reports (including reference listed drug information) related to the Miotics Product(s);

3. Bioequivalence study reports (including reference listed drug information) related to the Miotics Product(s);

4. all correspondence to the Respondent from the FDA and from the Respondent to the FDA relating to the Application(s) submitted by, on behalf of, or acquired by, the Respondent related to the Miotics Product(s);

5. annual and periodic reports related to the above-described Application(s), including any safety update reports;

6. FDA approved Product labeling related to the Miotics Product(s);

7. currently used product package inserts (including historical change of controls summaries) related to the Miotics Product(s);

8. FDA approved patient circulars and information related to the Miotics Product(s);

9. adverse event/serious adverse event summaries related to the Miotics Product(s);

10. summary of Product complaints from physicians related to the Miotics Product(s);

11. summary of Product complaints from customers related to the Miotics Product(s); and

12. Product recall reports filed with the FDA related to the Miotics Product(s).

TT. "Product Employee Information" means the following, for each Miotics Product Core Employee, as and to the extent permitted by Law:

1. a complete and accurate list containing the name of each relevant employee (including former employees who were employed by Respondent within ninety (90) days of the execution date of any Remedial Agreement);

2. with respect to each such employee, the following information:

    a. the date of hire and effective service date;

    b. job title or position held;

    c. a specific description of the employee's responsibilities related to the Miotics Product; *provided, however*, in lieu of this description, Respondent may provide the employee's most recent performance appraisal;

    d. the base salary or current wages;

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

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

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

3. at the Acquirer's option or the Proposed Acquirer's option (as applicable), copies of all employee benefit plans and summary plan descriptions (if any) applicable to the relevant employees.

UU. "Product Improvements" means any new, improved or modified composition (*e.g.*, without limitation, structural modifications to the active pharmaceutical ingredients, and/or different salt forms, hydrates or polymorphs of such active pharmaceutical ingredients), combination, formulation or line extension of, or derived from, the Miotics Product (including, without limitation, the addition, subtraction, substitution and/or modification of one or more Components in the Miotics Product).

VV. "Product Intellectual Property" means all of the following related to the Miotics Products (other than Product Licensed Intellectual Property):

1. Patents;

2. Copyrights;

3. Trademarks (including, without limitation, the "Miochol®-E" Trademark), Trade Dress, trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development and other information;

4. Software; and

5. rights to obtain and file for patents and copyrights and registrations thereof;

provided, however, "Product Intellectual Property" does not include the corporate names or corporate trade dress of "Novartis," or the corporate names or corporate trade dress of any other corporations or companies owned or controlled by Respondent or the related logos thereof.

WW. "Product Licensed Intellectual Property" means all of the following:

1. Patents, Copyrights, Trademarks, and Software that are related to the Miotics Product(s) that Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for a Retained Product(s) that has been marketed or sold by Respondent within the two-year period immediately preceding the Acquisition Date; and

2. trade secrets, know-how, techniques, data, inventions, practices, methods, and other confidential or proprietary technical, business, research, Development, and other information, and all rights in the Geographic Territory to limit the use or disclosure thereof, that are related to the Miotics Product(s) and that Respondent can demonstrate have been routinely used, prior to the Acquisition Date, for a Retained Product(s) that has been marketed or sold by the Respondent within the two-year period immediately preceding the Acquisition Date;

provided however, that, in cases where the aggregate retail sales of a Retained Product(s) in dollars within the two-year period immediately preceding the Acquisition Date collectively are less than the aggregate retail sales in dollars within the same period of the Miotics Product(s), the above-described intellectual property shall be considered, at the Acquirer's option, to be Product Intellectual Property and, thereby, subject to assignment to the Acquirer;

provided further, however, that in such cases, Respondent may take a license back from the Acquirer for such intellectual property for use in connection with the Retained Products and such a license to Respondent may be perpetual, fully paid-up and royalty-free license(s) with rights to sublicense.

XX. "Product Manufacturing Employees" means all salaried employees of Respondent who have directly participated in the planning, design, implementation or operational management of the Product Manufacturing Technology of the Miotics Product(s) (irrespective of the portion of working time involved unless such participation consisted solely of oversight of legal,

accounting, tax or financial compliance) within the eighteen (18) month period immediately prior to the Closing Date.

YY. "Product Manufacturing Technology" means:

1. all technology, trade secrets, know-how, and proprietary information (whether patented, patentable or otherwise) related to the manufacture of the Miotics Product(s), including, but not limited to, the following: all product specifications, processes, product designs, plans, trade secrets, ideas, concepts, manufacturing, engineering, and other manuals and drawings, standard operating procedures, flow diagrams, chemical, safety, quality assurance, quality control, research records, clinical data, compositions, annual product reviews, regulatory communications, control history, current and historical information associated with the FDA Application(s) conformance and cGMP compliance, and labeling and all other information related to the manufacturing process, and supplier lists;

2. all active pharmaceutical ingredients related to the Miotics Product(s) to the extent owned or controlled by the Respondent; and,

3. for those instances in which the manufacturing equipment is not readily available from a Third Party, at the Acquirer's option, all such equipment used to manufacture the Miotics Product(s).

ZZ. "Product Marketing Materials" means all marketing materials used specifically in the marketing or sale of the Miotics Product(s) in the Geographic Territory as of the Closing Date, including, without limitation, all advertising materials, training materials, product data, mailing lists, sales materials (*e.g.*, detailing reports, vendor lists, sales data), marketing information (*e.g.*, competitor information, research data, market intelligence reports, statistical programs (if any) used for marketing and sales research), customer information (including customer net purchase information to be provided on the basis of either dollars and/or units for each month, quarter or year), sales forecasting models, educational materials, and advertising and display materials, speaker lists, promotional and marketing materials, Website content and advertising and display materials, artwork for the production of packaging components, television masters and other similar materials related to the Miotics Product(s).

AAA. "Product Research and Development Employees" means all salaried employees of Respondent who directly have participated in the research, Development, or regulatory approval process, or clinical studies of the Miotics Product(s) (irrespective of the portion of working time involved, unless such participation consisted solely of oversight of legal, accounting, tax or financial compliance) within the eighteen (18) month period immediately preceding the Closing Date.

BBB. "Remedial Agreement(s)" means the following:

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

2. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Miotics Product to the benefit of the Acquirer that is specifically referenced and attached to this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto, that has been approved by the Commission to accomplish the requirements of the Order in connection with the Commission's determination to make this Order final;

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

4. any agreement between Respondent and a Third Party to effect the assignment of assets or rights of Respondent related to a Miotics Product to the benefit of the Acquirer that has been approved by the Commission to accomplish the requirements of this Order, including all amendments, exhibits, attachments, agreements, and schedules thereto.

CCC. "Retained Product(s)" means any Product(s) other than a Miotics Product.

DDD. "Right of Reference or Use" means the authority to rely upon, and otherwise use, an investigation for the purpose of obtaining approval of an Application, including the ability to make available the underlying raw data from the investigation for FDA audit.

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

FFF. "Supply Cost" means a cost not to exceed the manufacturer's average direct per unit cost in United States dollars of manufacturing the Miotics Product for the twelve (12) month period

immediately preceding the Acquisition Date. "Supply Cost" shall expressly exclude any intracompany business transfer profit; *provided, however*, that in each instance where: (1) an agreement to Contract Manufacture is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement, "Supply Cost" means the cost as specified in such Remedial Agreement.

GGG. "Technology Transfer Standards" means requirements and standards sufficient to ensure that the information and assets required to be delivered pursuant to this Order are delivered in an organized, comprehensive, complete, useful, error-free, timely (*i.e.*, ensuring no unreasonable delays in transmission), and meaningful manner. Such standards and requirements shall include, *inter alia*,

a. designating employees knowledgeable about the Product Manufacturing Technology (and all related intellectual property) related to the specified Product(s) who will be responsible for communicating directly with the Acquirer and/or its Designee, and the Interim Monitor (if one has been appointed), for the purpose of effecting such delivery;

b. preparing technology transfer protocols and transfer acceptance criteria for both the processes and analytical methods related to the specified Product(s) that are acceptable to the Acquirer;

c. preparing and implementing a detailed technological transfer plan that contains, *inter alia*, the transfer of all relevant information, all appropriate documentation, all other materials, and projected time lines for the delivery of all such Product Manufacturing Technology (including all related intellectual property) to the Acquirer or its Designee; and

d. providing, in a timely manner, assistance and advice to enable the Acquirer or its Designee to:

(1) manufacture the specified Product(s) in the quality and quantities achieved by the Respondent, or the manufacturer and/or developer of such specified Product(s);

(2) obtain any Product Approvals necessary for the Acquirer or its Designee, to manufacture, distribute, market, and sell the specified Product(s) in commercial quantities and to meet all Agency-approved specifications for the specified Product(s); and

(3) receive, integrate, and use all such Product Manufacturing Technology and all such intellectual property related to the specified Product(s).

HHH. "Third Party(ies)" means any non-governmental Person other than the following: Respondent Novartis, Alcon, or the Acquirer.

III. "Trade Dress" means the current trade dress of the specified Product, including but not limited to, Product packaging, and the lettering of the Product trade name or brand name.

JJJ. "Trademark(s)" means all proprietary names or designations, trademarks, service marks, trade names, and brand names, including registrations and applications for registration thereof (and all renewals, modifications, and extensions thereof) and all common law rights, and the goodwill symbolized thereby and associated therewith.

KKK. "Website" means the content of the Website(s) located at the Domain Names, the Domain Names, and all copyrights in such Website(s), to the extent owned by Respondent; *provided, however,* "Website" shall not include the following: (1) content owned by Third Parties and other Product Intellectual Property not owned by Respondent that are incorporated in such Website(s), such as stock photographs used in the Website(s), *except* to the extent that Respondent can convey its rights, if any, therein; or (2) content unrelated to any of the Miotics Product(s).

II.

IT IS FURTHER ORDERED that:

A. Not later than the earlier of: (1) ten (10) days after the Acquisition Date or (2) ten (10) days after the Order Date, Respondent shall divest the Miotics Product Assets and grant the Miotics Product Licenses, absolutely and in good faith, to Bausch & Lomb pursuant to, and in accordance with, the Miotics Product Divestiture Agreements (which agreements shall not limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that this Order shall not be construed to reduce any rights or benefits of Bausch & Lomb or to reduce any obligations of the Respondent under such agreements), and each such agreement, if it becomes a Remedial Agreement is incorporated by reference into this Order and made a part hereof;

provided, however, that if Respondent has divested Miotics Product Assets and granted the Miotics Product Licenses to Bausch & Lomb prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that Bausch & Lomb is not an acceptable purchaser of the Miotics Product Assets, then Respondent shall immediately rescind the transaction with Bausch & Lomb, in whole or in part, as directed by the Commission, and shall divest the Miotics Product Assets and grant the Miotics Product Licenses within one hundred eighty (180) days from the Order Date, absolutely and in good faith, at no minimum price, to an Acquirer that receives the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission;

provided further that if Respondent has divested the Miotics Product Assets to Bausch & Lomb prior to the Order Date, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondent that the manner in which the divestiture

was accomplished is not acceptable, the Commission may direct Respondent, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Miotics Product Assets to Bausch & Lomb (including, but not limited to, entering into additional agreements or arrangements) as the Commission may determine are necessary to satisfy the requirements of this Order.

B. Prior to the Closing Date, Respondent shall secure all consents and waivers from all Third Parties that are necessary to permit Respondent to divest the Miotics Product Assets to the Acquirer, and/or to permit the Acquirer to continue the research, Development, manufacture, sale, marketing or distribution of the Miotics Products in the Geographic Territory;

provided, however, Respondent may satisfy this requirement by certifying the Acquirer has executed all such agreements directly with each of the relevant Third Parties.

C. Respondent shall provide, or cause to be provided, all Product Manufacturing Technology (including all related intellectual property) related to the Miotics Products that Respondent owns, and shall provide, or cause to be provided, all rights to all Product Manufacturing Technology (including all related intellectual property) that is owned by a Third Party and licensed by Respondent related to the Miotics Products, to the Acquirer in a manner consistent with the Technology Transfer Standards. Respondent shall obtain any consents from Third Parties required to comply with this provision.

D. Respondent shall:

1. upon reasonable written notice and request from the Acquirer to Respondent, Contract Manufacture and deliver to the Acquirer, in a timely manner and under reasonable terms and conditions, a supply of each of the Contract Manufacture Products and Services at Respondent's Supply Cost, for a period of time sufficient to allow the Acquirer (or the Designee of the Acquirer) to obtain all of the relevant Product Approvals necessary to manufacture in commercial quantities, and in a manner consistent with cGMP, the finished Miotics Product independently of Respondent and to secure sources of supply of the active pharmaceutical ingredients, excipients, other ingredients, and/or necessary Components listed in the specified Respondent's Application(s) for the Product from Persons other than the Respondent or Alcon;

2. make representations and warranties to the Acquirer that the Contract Manufacture Products and Services supplied pursuant to a Remedial Agreement meet the relevant Agency-approved specifications. For the Product(s) to be marketed or sold in the Geographic Territory, Respondent shall agree to indemnify, defend and hold the Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Product(s) supplied to the Acquirer pursuant to a Remedial Agreement by Respondent to meet cGMP. This obligation may be made contingent upon the Acquirer giving Respondent prompt written notice of such

claim and cooperating fully in the defense of such claim. The Remedial Agreement shall be consistent with the obligations assumed by Respondent under this Order;

provided, however, that Respondent may reserve the right to control the defense of any such litigation, including the right to settle the litigation, so long as such settlement is consistent with Respondent's responsibilities to supply the ingredients and/or Components in the manner required by this Order; *provided further* that this obligation shall not require Respondent to be liable for any negligent act or omission of the Acquirer or for any representations and warranties, express or implied, made by the Acquirer that exceed the representations and warranties made by Respondent to the Acquirer;

provided further that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Miotics Product, each such agreement may contain limits on Respondent's aggregate liability resulting from the failure of the Products supplied to the Acquirer pursuant to such Remedial Agreement by Respondent to meet cGMP;

3. make representations and warranties to the Acquirer that Respondent shall hold harmless and indemnify the Acquirer for any liabilities or loss of profits resulting from the failure by Respondent to deliver the Contract Manufacture Products and Services in a timely manner as required by the Remedial Agreement(s) unless Respondent can demonstrate that its failure was entirely beyond the control of Respondent and in no part the result of negligence or willful misconduct by Respondent;

   provided, however, that in each instance where: (1) an agreement to divest relevant assets is specifically referenced and attached to this Order, and (2) such agreement becomes a Remedial Agreement for a Miotics Product, each such agreement may contain limits on Respondent's aggregate liability for such a breach;

4. during the term of any agreement to Contract Manufacture between Respondent and the Acquirer, upon written request of the Acquirer or the Interim Monitor (if any has been appointed), make available to the Acquirer and the Interim Monitor (if any has been appointed) all records that relate to the manufacture of the relevant Contract Manufacture Products and Services that are generated or created after the Closing Date;

5. during the term of any agreement to Contract Manufacture between Respondent and the Acquirer, maintain manufacturing facilities necessary to perform each of the relevant Contract Manufacture Products and Services;

6. pending FDA approval of any Miotics Product that has not yet been approved for commercial scale-up manufacturing and during the term of any agreement to Contract Manufacture between Respondent and the Acquirer, provide consultation with knowledgeable employees of Respondent and training, at the written request of the

Acquirer and at a facility chosen by the Acquirer, for the purposes of enabling the Acquirer (or the Designee of the Acquirer) to obtain all Product Approvals to manufacture the Miotics Products in the same quality achieved by, or on behalf of, the Respondent and in commercial quantities, and in a manner consistent with cGMP, independently of Respondent, and sufficient to satisfy management of the Acquirer that its personnel (or the Designee's personnel) are adequately trained in the manufacture of the Miotics Products; and

7. not extend or renew any agreement to Contract Manufacture that becomes a Remedial Agreement, or enter into any subsequent agreement to Contract Manufacture with the Acquirer to succeed an agreement to Contract Manufacture that becomes a Remedial Agreement, without the prior approval of the Commission.

Paragraphs II.D.1. - 6., shall remain in effect until the earliest of: (1) the date the Acquirer (or the Designee(s) of the Acquirer), respectively, is approved by the FDA to manufacture the Miotics Product and able to manufacture the Miotics Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Alcon; (2) the date the Acquirer notifies the Commission and the Respondent of its intention to abandon its efforts to manufacture the Miotics Products; (3) the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture the Miotics Product, or (4) five (5) years from the Closing Date.

E. Respondent shall:

1. submit to the Acquirer, at Respondent's expense, all Confidential Business Information;

2. deliver such Confidential Business Information to the Acquirer:

   a. in good faith;

   b. in a timely manner, *i.e.*, as soon as practicable, avoiding any delays in transmission of the respective information; and

   c. in a manner that ensures its completeness and accuracy and that fully preserves its usefulness;

3. pending complete delivery of all such Confidential Business Information to the Acquirer, provide the Acquirer and the Interim Monitor (if any has been appointed) with access to all such Confidential Business Information and employees who possess or are able to locate such information for the purposes of identifying the books, records, and files directly related to the Miotics Products that contain such Confidential Business Information and facilitating the delivery in a manner consistent with this Order;

4. not use, directly or indirectly, any such Confidential Business Information other than as necessary to comply with the following:

    a. the requirements of this Order;

    b. Respondent's obligations to the Acquirer under the terms of any Remedial Agreement; or

    c. applicable Law;

5. not disclose or convey any such Confidential Business Information, directly or indirectly, to any Person except the Acquirer or other Persons specifically authorized by the Acquirer to receive such information; and

6. not provide, disclose or otherwise make available, directly or indirectly, any such Confidential Business Information to the employees associated with business related to those Retained Products that are indicated for the same use as the Miotics Products.

F. Respondent shall not enforce any agreement against a Third Party or the Acquirer to the extent that such agreement may limit or otherwise impair the ability of the Acquirer to acquire or use the Product Manufacturing Technology (including all related intellectual property) related to the Miotics Products from the Third Party. Such agreements include, but are not limited to, agreements with respect to the disclosure of Confidential Business Information related to such Product Manufacturing Technology.

G. Not later than ten (10) days after the Closing Date, Respondent shall grant a release to each Third Party that is subject to an agreement as described in Paragraph II.F. that allows the Third Party to provide the relevant Product Manufacturing Technology to the Acquirer. Within five (5) days of the execution of each such release, Respondent shall provide a copy of the release to the Acquirer.

H. Respondent shall require, as a condition of continued employment post-divestiture of the Miotics Product Assets, that each Miotics Product Core Employee retained by Respondent, the direct supervisor(s) of any such employee, and any other employee retained by Respondent and designated by the Interim Monitor (if applicable) sign a confidentiality agreement pursuant to which such employee shall be required to maintain all Confidential Business Information related to the Miotics Products as strictly confidential, including the nondisclosure of such information to all other employees, executives or other personnel of Respondent (other than as necessary to comply with the requirements of this Order).

I. Not later than thirty (30) days after the Closing Date, Respondent shall provide written notification of the restrictions on the use of the Confidential Business Information related to the Miotics Products by Respondent's personnel to all of Respondent's employees who:

1. are or were directly involved in the research, Development, manufacturing, distribution, sale or marketing of any of the Miotics Products;

2. are directly involved in the research, Development, manufacturing, distribution, sale or marketing of Retained Products that are indicated for the same use as the Miotics Products; and/or

3. may have Confidential Business Information.

Respondent shall give such notification by e-mail with return receipt requested or similar transmission, and keep a file of such receipts for one (1) year after the Closing Date. Respondent shall provide a copy of such notification to the Acquirer. Respondent shall maintain complete records of all such agreements at Respondent's registered office within the United States and shall provide an officer's certification to the Commission stating that such acknowledgment program has been implemented and is being complied with. Respondent shall monitor the implementation by its employees and other personnel of all applicable restrictions, and take corrective actions for the failure of such employees and personnel to comply with such restrictions or to furnish the written agreements and acknowledgments required by this Order. Respondent shall provide the Acquirer with copies of all certifications, notifications and reminders sent to Respondent's personnel.

J. Until Respondent completes the divestiture required by Paragraph II.A., and fully transfers and delivers, or cause to be transferred and delivered, the related Product Manufacturing Technology, to the Acquirer,

1. Respondent shall take such actions as are necessary to:

   a. maintain the full economic viability and marketability of the business associated with the Miotics Products;

   b. minimize any risk of loss of competitive potential for such business;

   c. prevent the destruction, removal, wasting, deterioration, or impairment of any of the Miotics Product Assets;

   d. ensure the assets required to be divested are transferred and delivered to the Acquirer in a manner that does not disrupt, delay, or impair the regulatory approval processes related to the business associated with the Miotics Products;

   e. ensure the completeness of the transfer and delivery of the Product Manufacturing Technology; and

2. Respondent shall not sell, transfer, encumber or otherwise impair the assets required to be divested (other than in the manner prescribed in this Order) nor take any action that

lessens the full economic viability, marketability, or competitiveness of the business associated with the Miotics Products.

K. Respondent shall not join, file, prosecute or maintain any suit, in law or equity, against the Acquirer or the Miotics Product Releasee(s) for the research, Development, manufacture, use, import, export, distribution, or sale of the Miotics Product(s) under the following:

1. any Patent owned or licensed by Respondent as of the day after the Acquisition Date that claims a method of making, using, or administering, or a composition of matter, relating to the Miotics Product(s), or that claims a device relating to the use thereof;

2. any Patents owned or licensed at any time after the Acquisition Date by Respondent that claim any aspect of the research, Development, manufacture, use, import, export, distribution, or sale of the Miotics Product(s), other than such Patents that claim inventions conceived by and reduced to practice after the Acquisition Date;

if such suit would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Miotics Products anywhere in the World for the purposes of marketing, distribution or sale within the Geographic Territory; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the Geographic Territory of the Miotics Product(s). Respondent shall also covenant to the Acquirer that as a condition of any assignment, transfer, or license to a Third Party of the above-described Patents, the Third Party shall agree to provide a covenant whereby the Third Party covenants not to sue the Acquirer or the related Miotics Product Releasee(s) under such Patents, if the suit would have the potential to interfere with that Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Miotics Products anywhere in the World for the purposes of marketing, distribution or sale within the Geographic Territory; or (2) the use within, import into, export from, or the supply, distribution, or sale within, the Geographic Territory of the Miotics Product(s).

L. Upon reasonable written notice and request from the Acquirer to Respondent, Respondent shall provide, in a timely manner, at no greater than Direct Cost, assistance of knowledgeable employees of Respondent to assist that Acquirer to defend against, respond to, or otherwise participate in any litigation related to the Product Intellectual Property related to any of the Miotics Products, if such litigation would have the potential to interfere with the Acquirer's freedom to practice the following: (1) the research, Development, or manufacture of the Miotics Product(s); or (2) the use, import, export, supply, distribution, or sale of the Miotics Product(s) within the Geographic Territory.

M. For any patent infringement suit in which either: (1) the Respondent is alleged to have infringed a Patent of another Person prior to the Closing Date, or for such suit as the Respondent has prepared or is preparing as of the Closing Date to defend against such infringement claim(s), and where such a suit would have the potential to interfere with the Acquirer's freedom to practice the following: the research, Development, or manufacture of

the Miotics Product(s); or the use, import, export, supply, distribution, or sale of the Miotics Product(s), or (2) a Person is alleged to have infringed a Patent the rights of which are granted to the Acquirer pursuant to this Order, or for such suit as the Respondent has prepared or is preparing as of the Closing Date to prosecute, Respondent shall:

1. cooperate with the Acquirer and provide any and all necessary technical and legal assistance, documentation and witnesses from Respondent in connection with obtaining resolution of any pending patent litigation involving the Miotics Product(s);

2. waive conflicts of interest, if any, to allow Respondent's outside legal counsel to represent the Acquirer in any ongoing patent litigation involving the Miotics Product(s); and

3. permit the transfer to the Acquirer of all of the litigation files and any related attorney work-product in the possession of Respondent's outside counsel relating to the Miotics Product(s).

N. Respondent shall not, in the Geographic Territory:

1. use the Trademarks related to the Miotics Products or any mark confusingly similar to such Trademarks, as a trademark, trade name, or service mark;

2. attempt to register Trademarks related to the Miotics Products;

3. attempt to register any mark confusingly similar to Trademarks related to the Miotics Products;

4. challenge or interfere with the Acquirer's use and registration of Trademarks related to the Miotics Products; or

5. challenge or interfere with the Acquirer's efforts to enforce its trademark registrations for and trademark rights in Trademarks related to the Miotics Products against Third Parties;

provided however, that this paragraph shall not preclude Respondent from continuing to use all trademarks, tradenames, or service marks that have been in use in commerce on a Retained Product at any time prior to the Acquisition Date.

O. Respondent shall not seek, directly or indirectly, pursuant to any dispute resolution mechanism incorporated in any Remedial Agreement, or in any agreement related to any of the Miotics Products, a decision the result of which would be inconsistent with the terms of this Order and/or the remedial purposes thereof.

III.

IT IS FURTHER ORDERED that:

A. At any time after Respondent signs the Consent Agreement in this matter, the Commission may appoint a monitor ("Interim Monitor") to assure that Respondent expeditiously complies with all of its obligations and perform all of its responsibilities as required by this Order, the Order to Maintain Assets and the Remedial Agreements.

B. The Commission shall select the Interim Monitor, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of a proposed Interim Monitor within ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed Interim Monitor, Respondent shall be deemed to have consented to the selection of the proposed Interim Monitor.

C. Not later than ten (10) days after the appointment of the Interim Monitor, Respondent shall execute an agreement that, subject to the prior approval of the Commission, confers on the Interim Monitor all the rights and powers necessary to permit the Interim Monitor to monitor Respondent's compliance with the relevant requirements of the Order in a manner consistent with the purposes of the Order.

D. If an Interim Monitor is appointed, Respondent shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Interim Monitor:

1. The Interim Monitor shall have the power and authority to monitor Respondent's compliance with the divestiture and asset maintenance obligations and related requirements of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Interim Monitor in a manner consistent with the purposes of the Order and in consultation with the Commission.

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

3. The Interim Monitor shall serve until the date of completion by Respondent of the divestiture of all Miotics Product Assets and the transfer and delivery of the related Product Manufacturing Technology in a manner that fully satisfies the requirements of the Orders and until the earliest of:

    a. the date the Acquirer (or its Designee(s)) is approved by the FDA to manufacture the Miotics Products and able to manufacture the Miotics Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Alcon;

b. the date the Acquirer notifies the Commission and the Respondent of its intention to abandon its efforts to manufacture the Miotics Product; or

c. the date of written notification from staff of the Commission that the Interim Monitor, in consultation with staff of the Commission, has determined that the Acquirer has abandoned its efforts to manufacture the Miotics Product;

d. five (5) years from the Closing Date;

provided, however, that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

4. Subject to any demonstrated legally recognized privilege, the Interim Monitor shall have full and complete access to Respondent's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Interim Monitor may reasonably request, related to Respondent's compliance with its obligations under the Order, including, but not limited to, its obligations related to the relevant assets. Respondent shall cooperate with any reasonable request of the Interim Monitor and shall take no action to interfere with or impede the Interim Monitor's ability to monitor Respondent's compliance with the Order.

5. The Interim Monitor shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Interim Monitor shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Interim Monitor's duties and responsibilities.

6. Respondent shall indemnify the Interim Monitor and hold the Interim Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Interim 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 Interim Monitor.

7. Respondent shall report to the Interim Monitor in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission. The Interim Monitor shall evaluate the reports submitted to the Interim Monitor by Respondent, and any reports submitted by the Acquirer with respect to the performance of Respondent's obligations under the Order or the Remedial Agreement(s). Within thirty (30) days from the date the Interim Monitor receives these reports, the Interim Monitor shall report in writing to the Commission concerning performance by Respondent of its obligations under the Order;

provided, however, beginning one hundred twenty (120) days after Respondent has filed its final report pursuant to Paragraph VIII.B., and every one hundred twenty (120) days thereafter, the Interim Monitor shall report in writing to the Commission concerning progress by the Acquirer toward obtaining FDA approval to manufacture the Miotics Products and obtaining the ability to manufacture the Miotics Products in commercial quantities, in a manner consistent with cGMP, independently of Respondent and Alcon.

8. Respondent may require the Interim Monitor and each of the Interim Monitor's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Interim Monitor from providing any information to the Commission.

E. The Commission may, among other things, require the Interim Monitor and each of the Interim 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 Interim Monitor's duties.

F. If the Commission determines that the Interim Monitor has ceased to act or failed to act diligently, the Commission may appoint a substitute Interim Monitor in the same manner as provided in this Paragraph.

G. The Commission may on its own initiative, or at the request of the Interim Monitor, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

H. The Interim Monitor appointed pursuant to this Order may be the same Person appointed as a Divestiture Trustee pursuant to the relevant provisions of this Order.

IV.

IT IS FURTHER ORDERED that:

A. If Respondent has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver or otherwise convey the Miotics Product Assets as required by this Order, the Commission may appoint a trustee ("Divestiture Trustee") to assign, grant, license, divest, transfer, deliver or otherwise convey these assets 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 § 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondent shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the

Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondent to comply with this Order.

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

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondent shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestiture required by this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered or otherwise conveyed.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission; *provided, however*, the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent 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 Divestiture Trustee, by the court.

4. The 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 Respondent's absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to the Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondent from among those approved by the Commission; *provided further, however*, that Respondent shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission 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 Respondent, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order; *provided, however,* that the Divestiture Trustee appointed pursuant to this Paragraph may be the same Person appointed as Interim Monitor pursuant to the relevant provisions of the Order to Maintain Assets in this matter.

8. The Divestiture Trustee shall report in writing to Respondent and to the Commission every sixty (60) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondent may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

E. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph.

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

V.

IT IS FURTHER ORDERED that, in addition to any other requirements and prohibitions relating to Confidential Business Information in this Order, Respondent shall assure that Respondent's counsel (including in-house counsel under appropriate confidentiality arrangements) shall not retain unredacted copies of documents or other materials provided to the Acquirer or access original documents provided to the Acquirer, except under circumstances where copies of documents are insufficient or otherwise unavailable, and only for the following purposes:

A. To assure Respondent's compliance with any Remedial Agreement, this Order, any Law (including, without limitation, any requirement to obtain regulatory licenses or approvals, and rules promulgated by the Commission), any data retention requirement of any applicable Government Entity, or any taxation requirements; or

B. To defend against, respond to, or otherwise participate in any litigation, investigation, audit, process, subpoena or other proceeding relating to the divestiture or any other aspect of the Miotics Products or assets and businesses associated with the Miotics Products;

provided, *however*, that Respondent may disclose such information as necessary for the purposes set forth in this Paragraph V pursuant to an appropriate confidentiality order, agreement or arrangement;

provided further, *however,* that pursuant to this Paragraph V, Respondent shall: (1) require those who view such unredacted documents or other materials to enter into confidentiality agreements with the Acquirer (but shall not be deemed to have violated this requirement if

the Acquirer withholds such agreement unreasonably); and (2) use best efforts to obtain a protective order to protect the confidentiality of such information during any adjudication.

VI.

IT IS FURTHER ORDERED that:

A. Any Remedial Agreement shall be deemed incorporated into this Order.

B. Any failure by the Respondent to comply with any term of a Remedial Agreement shall constitute a failure to comply with this Order.

C. Respondent shall include in each Remedial Agreement a specific reference to this Order, the remedial purposes thereof, and provisions to reflect the full scope and breadth of the Respondent's obligations to the Acquirer pursuant to this Order.

D. Respondent shall also include in each Remedial Agreement a representation from the Acquirer that the Acquirer shall use commercially reasonable efforts to secure the FDA approval(s) necessary to manufacture, or to have manufactured by a Third Party, in commercial quantities, the Miotics Products and to have any such manufacture to be independent of Respondent and Alcon, as soon as reasonably practicable.

E. Respondent shall not modify or amend any of the terms of any Remedial Agreement without the prior approval of the Commission.

VII.

IT IS FURTHER ORDERED that the purpose of the divestiture of the Miotics Products and the transfer and delivery of the related Product Manufacturing Technology and the related obligations imposed on the Respondent by this Order is:

A. to ensure the continued use of such assets in the research, Development, and manufacture of the Miotics Products and for the purposes of the business associated with the Miotics Products within the Geographic Territory;

B. to provide for the future use of such assets for the distribution, sale and marketing of the Miotics Products in the Geographic Territory;

C. to create a viable and effective competitor, that is independent of the Respondent and Alcon:

1. in the research, Development, and manufacture of the Miotics Products for the purposes of the business associated with the Miotics Products within the Geographic Territory; and

2. in the distribution, sale and marketing of the Miotics Products in the Geographic Territory; and,

D. to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in a timely and sufficient manner.

VIII.

IT IS FURTHER ORDERED that:

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

B. Within thirty (30) days after the Order Date, and every sixty (60) days thereafter until Respondent has fully complied with the following: Paragraphs II.A , II.B., II.C., II.E.1.-3., II.G., II.H.1.-4., II.I., and II.K., Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order. Respondent shall submit at the same time a copy of its report concerning compliance with this Order to the Interim Monitor, if any Interim Monitor has been appointed. Respondent shall include in its reports, among other things that are required from time to time, a full description of the efforts being made to comply with the relevant paragraphs of the Order, including a full description of all substantive contacts or negotiations related to the divestiture of the Miotics Product Assets and the identity of all Persons contacted, including copies of all written communications to and from such Persons, all internal memoranda, and all reports and recommendations concerning completing the obligations.

C. One (1) year after the Order Date, annually for the next nine years on the anniversary of the Order Date, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order.

IX.

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

A. any proposed dissolution of Novartis AG;

B. any proposed acquisition, merger or consolidation of Novartis AG; or

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

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the Respondent made to its principal United States offices, registered office of its United States subsidiary, or its headquarters address, 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 books, ledgers, accounts, correspondence, memoranda and all other records and documents 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(s) 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.

XI.

IT IS FURTHER ORDERED that this Order shall terminate on September 28, 2020.

By the Commission, Commissioner Kovacic recused.

Donald S. Clark
Secretary

SEAL
ISSUED: September 28, 2010

NON-PUBLIC APPENDIX II.A.
MIOTICS PRODUCT DIVESTITURE AGREEMENTS

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