

*Affected Parties:* Federal agencies, and labor organizations representing agency employees.

*Respondents Obligation:* Voluntary.

*Frequency:* On occasion, as needed by the parties.

Comments regarding the burden estimate given above, or any other aspects of this information collection, including suggestions for reducing the burden, should be sent to:

Diana Rowen, OMB Desk Officer, 725  
17th Street, NW., Room 3001,  
Washington, DC 20503 (202) 395-6880  
and

Ted M. Chaskelson, General Counsel,  
Federal Mediation and Conciliation  
Service, 2100 K Street, NW.,  
Washington, DC 20427 (202) 653-5305.

Dated: October 22, 1990.

**Bernard E. DeLury,**  
*Director.*

[FR Doc. 90-25584 Filed 10-29-90; 8:45 am]  
BILLING CODE 6372-01-M

## FEDERAL RESERVE SYSTEM

### **Nyle E. Barlow, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies**

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1990.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Nyle E. Barlow*, Broomfield, Colorado; to acquire an additional 5.55 percent (totalling 28.32 percent) of the voting shares of Front Range Capital Corporation, Lafayette, Colorado, parent of Bank VII, Lafayette, Lafayette, Colorado.

2. *Donald E. Imel*, Boulder, Colorado; to acquire an additional 5.18 percent (totalling 28.01 percent) of the voting shares of Front Range Capital Corporation, Lafayette, Colorado, parent of Bank VII, Lafayette, Lafayette, Colorado.

Board of Governors of the Federal Reserve System, October 24, 1990.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 90-25595 Filed 10-29-90; 8:45 am]

BILLING CODE 6210-01-M

### **Larimer Bancorporation, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies**

The company listed in this notice the applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 21, 1990.

**A. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Larimer Bancorporation, Inc.*, Fort Collins, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of First Interstate Bank of Fort Collins, Fort Collins, Colorado.

Board of Governors of the Federal Reserve System, October 24, 1990.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 90-25596 Filed 10-29-90 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

[Docket Nos. 9227; 9238; and 9239]

### **Chain Pharmacy Association of New York State, Inc., et al.; Proposed Consent Agreements With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, the five consent agreements, accepted subject to final Commission approval, would prohibit, among other things, the two pharmacy chains, Melville and Rite Aid (D-9227), from entering into any agreement with other pharmacy firms to withdraw from or to refuse to enter into any participation agreement. For ten years, the two chains would also be prohibited from communicating to another pharmacy firm their decision or intention to enter or to refuse to enter into such a participation agreement, and for eight years, from advising any pharmacy firm on whether to enter into any participation agreement.

The two trade associations, Empire State Pharmaceutical Society (D-9238) and Capital Area Pharmaceutical Society (D-9239), along with Alan Kadish, would be prohibited from organizing or encouraging any agreement among pharmacy firms to refuse to enter into or to withdraw from any third-party prescription plan. The consent agreements, among other things, would also prohibit the respondents, for a period of ten years, from continuing any meeting at which representatives of pharmacy firms exchange information concerning the firms' intention to enter into, refuse to enter into, or withdraw from any third-party prescription plan, and from communicating to any firm any information concerning any other pharmacy firm's intention to enter into, refuse to enter into, or to withdraw from any existing or proposed third-party prescription plan.

**DATES:** Comments must be received on or before December 31, 1990.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael McNeely, FTC/S-3308, Washington, DC 20580. (202) 326-2904.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's

rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Drug Co., Inc., a corporation; Kinney Drugs, Inc., a corporation; Melville Corp., a corporation; Peterson Drug Co. of North Chili, New York, Inc., a corporation; Rite Aid Corp., a corporation; and James E. Krahulec, an individual.

Docket No. 9227

#### Agreement Containing Order To Cease and Desist

The agreement herein, by and between Melville Corporation, a corporation, hereinafter sometimes referred to as "Melville" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Melville Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at \_\_\_\_\_ One Theall Road \_\_\_\_\_ in the City of \_\_\_\_\_ Rye \_\_\_\_\_, State of New York 10580.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

I

For purposes of the order, the following definitions shall apply:

A. *Melville* means Melville Corporation, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agree to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Melville. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

II

*It is ordered* that Melville, directly, indirectly, or through any corporate or other device, in or in connection with its pharmacy operations and activities,

including but not limited to those of its CVS division, in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Melville with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Melville and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into, refusing to enter into, participating in, or withdrawing from any existing or proposed participation agreement into which Melville and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Melville from:

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer; or

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

### III

*It is further ordered* that Melville:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed

in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Melville's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

### IV

*It is further ordered* that Melville:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Melville, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all documents generated by Melville or that come into Melville's possession, custody, or control regardless of source, that embody, discuss or refer to the decision or upon which Melville relies in deciding whether to enter into any participation agreement in which Melville participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Melville such as, assignment or sale resulting in the emergency of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

In the Matter of Chain Pharmacy Association of New York State, Inc., a corporation; Fay's Drug Co., Inc., a corporation; Kinney Drugs, Inc., a corporation; Melville Corp, a corporation; Peterson Drug Co., of North Chili, New York, Inc., a corporation; Rite Aid Corp., a corporation; and James E. Krahulec, an individual.

### Agreement Containing Order To Cease and Desist

*Docket No. 9227*

The agreement herein, by and between Rite Aid Corporation, a

corporation, hereinafter sometimes referred to as "Rite Aid" or respondent, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Rite Aid Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at Railroad Avenue and Trindle Road, in the City of Shiremanstown, State of Pennsylvania, 17011.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission

may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

For purposes of the order, the following definitions shall apply:

A. *Rite Aid* means Rite Aid Corporation, its directors, officers, agents, employees, divisions, subsidiaries, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefit programs for government employees, retirees or dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to

Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures, but excludes any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, which own, are owned by, control or are under common control with Rite Aid. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

##### II

*It is ordered* that Rite Aid, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, advocating an agreement, or organizing or cooperating with any Pharmacy Firm(s) to (1) Boycott, refuse to enter into, withdraw from, or not participate in, any Participation Agreement or (2) threaten to boycott, threaten to refuse to enter into, threaten to withdraw from, or threaten not to participate in, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, stating or communicating in any way to any pharmacy firm the intention or decision of Rite Aid with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering;

C. For a period of eight (8) years after the date this order becomes final, advising any pharmacy firm with respect to entering into, refusing to enter

into, participating in, or withdrawing from any existing or proposed participation agreement into which Rite Aid and the other pharmacy firm have entered, could enter or are considering entering.

Provided that nothing in this order shall prevent Rite Aid from

(1) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding;

(2) Subcontracting, preparing joint bids, or otherwise jointly undertaking with pharmacy firms to provide prescription drug services under a participation agreement if requested to do so in writing by the third-party payer;

(3) Communicating to the public truthful, nondeceptive statements concerning any existing or proposed participation agreement.

##### III

*It is further ordered* that Rite Aid:

A. Provide a copy of this order within thirty (30) days after the date this order becomes final to each officer, director, employee pharmacist who is employed in New York state, and each employee whose responsibilities include recommending or deciding whether to enter into any participation agreement, and each employee who regularly attends meetings on Rite Aid's behalf that include representatives of other pharmacies; and

B. For a period of five (5) years after the date this order becomes final, provide each new director and each employee who enters a position described in Paragraph A a copy of the order within ten (10) days of the date the employee or director assumes the new position.

##### IV

*It is further ordered* that Rite Aid:

A. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Rite Aid, require, setting forth in detail the manner and form in which it has complied and is complying with this order;

B. For a period of five (5) years after the date this order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice all

documents generated by Rite Aid or that come into Rite Aid's possession, custody, or control regardless of source, that embody, discuss or refer to the decision or upon which Rite Aid relies in deciding whether to enter into any participation agreement in which Rite Aid participates, has participated, or has considered participating; and

C. Notify the Commission at least thirty (30) days prior to any proposed change in Rite Aid such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, the creation, sale or dissolution of a subsidiary, or any other change that may affect compliance with this order.

#### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, agreements to a proposed consent order from Melville Corporation ("Melville") and Rite Aid Corporation ("Rite Aid") ("respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

#### Description of Complaint

A complaint that the Commission issued on April 19, 1989, alleges that respondents agreed with others to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreement coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts.

Melville operated a chain of drug stores under the name CVS, including approximately 115 stores in New York State, in 1986. The allegations of the complaint with respect to Melville are based on the activities of the CVS division ("CVS") of Melville. Rite Aid operated approximately 260 pharmacies in New York State in 1986. CVS and Rite Aid were both members of the Chain Pharmacy Association of New York State ("Chain Association").

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000

beneficiaries. New York State selected PAID Prescription, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, respondents participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Each respondent purchased prescription drugs at an average cost that was below the level of reimbursement for ingredients costs that was offered. Each respondent would have suffered a loss of customers if its competitors had participated in the program at a time when it was not participating.

The complaint alleges that during or before March 1986, the State of New York informed the Chain Association of the proposed terms of the Program. The Chain Association then informed respondents and other pharmacies of the proposed terms. The Chain Association told its members that the extent to which pharmacies participated in the Program could affect state officials' consideration of the Program's reimbursement level. The Chain Association held meetings at which some members stated that they would not participate in the Program. Respondents and other pharmacy firms also discussed their intentions regarding participation in the Program outside of Chain Association meetings. The complaint further alleges that through these exchanges of information and other acts, respondents agreed with others to refuse to participate in the Program to coerce the State of New York to increase the level of reimbursement under the Program.

The complaint alleges that the agreement to refuse to participate in the Program injured consumers in New York State by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the conspiracy by respondents and others forced New York State to pay substantial additional sums for

prescription drugs provided to beneficiaries of the Program.

#### Description of the Proposed Consent Orders

The proposed orders would require each respondent to cease and desist from entering into any agreement among pharmacy firms to withdraw from or refuse to enter into any participation agreement. The proposed order would also prohibit each respondent, for a period of ten years, from communicating to any pharmacy firm the respondent's decision or intention to enter into or refuse to enter into any participation agreement. The proposed order would also prohibit each respondent, for a period of eight years, from advising any pharmacy firm with respect to entering into or refusing to enter into any participation agreement.

The orders would not prohibit either respondent from: (a) Petitioning the government on matters involving legislation, rules or procedures; (b) jointly undertaking with other pharmacy firms to provide prescription drug services so long as the third-party payer requests in writing that the respondent do so; or (c) making truthful and nondeceptive public statements about existing or proposed participation agreements. The orders would permit respondents to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, a respondent could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott a third-party prescription plan.

The orders would require each respondent to distribute a copy of the order to certain employees and others, to file compliance reports, to retain certain documents, and to notify the Commission of certain changes in its corporate structure.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement

purposes only and do not constitute an admission by either respondent that the law has been violated as alleged in the complaint.

*Docket No. 9238*

#### Agreement Containing Consent Order To Cease and Desist

In the Matter of Empire State Pharmaceutical Society, Inc., a corporation.

The agreement herein, by and between Empire State Pharmaceutical Society, Inc., a corporation, by its duly authorized officer, hereinafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its office and principal place of business at 12 West 23rd Street, New York, New York 10010.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 15.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said

copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

##### I

For purposes of this Order, the following definitions shall apply:

A. *Empire* means the Empire State Pharmaceutical Society, Inc. and its directors, committees, officers, representatives, agents, employees, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred

provider organizations; prescription service administrative organizations; and health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

##### II

*It is ordered* that Empire, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, continuing a formal or informal meeting of representatives of pharmacy firms after (1) any person makes any statement concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement and Empire fails to eject such person from the meeting, or (2) two persons make such statements;

C. For a period of ten (10) years after the date this order becomes final, communicating to any pharmacist or pharmacy firm any information concerning any other pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; and

D. For a period of eight (8) years after the date this order becomes final, providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness of participating in any existing or proposed participation agreement. However, nothing in this paragraph shall prohibit Empire from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers.

Provided that nothing in this order shall be construed to prevent Empire from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

### III

*It is further ordered* that Empire:

A. Publish this order and the accompanying complaint in an issue of the Empire newsletter or in any successor publication published no later than sixty (60) days after the date this order becomes final, in the same type size normally used for articles that are published in the Empire Newsletter or successor publication;

B. For a period of five (5) years after the date this order becomes final, provide each new Empire member, at the time the member is accepted into membership, with a copy of the Empire newsletter in which this order and the accompanying complaint was published as required by Paragraph III.A.;

C. File a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to Empire, require, setting forth in detail the manner and form in which it has complied and is complying with the order;

D. For a period of five (5) years after the date this order becomes final,

maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this order, including, but not limited to, all documents generated by Empire or that come into Empire's possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

E. Notify the Commission at least thirty (30) days prior to any proposed change in Empire such as assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, or any other change that may affect compliance with this order.

#### **Analysis of Proposed Consent Orders to Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement to proposed consent order. The agreement is from the Empire State Pharmaceutical Society ("Empire").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

#### *Description of Complaint*

The complaint issued by the Commission on March 15, 1990, alleges that members of Empire agreed to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreements coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts:

Empire is an association of pharmacy owners in the State of New York.

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescriptions, Inc. to administer the Program. Pharmacies that participate in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, members of Empire participated in many prescription drug benefit plans,

including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Members of Empire would have suffered a loss of customers if their competitors had participated in the Program at a time when they were not participating.

The complaint alleges that, during 1986, New York State informed Empire of the proposed terms of the Program and Empire then communicated this information to its members. Thereafter, Empire held a meeting at which owners of pharmacy firms informed other owners of pharmacy firms that they would not participate in the Program. Empire exhorted pharmacy owners to refuse to participate in the Program. The complaint further alleges that through these exchanges of information and other acts, and through the activities of Empire, members of Empire and other owners of pharmacy firms agreed to refuse to participate in the Program at the proposed reimbursement level, for the purpose of increasing the level of reimbursement offered by the State of New York under the Program.

The complaint alleges that the agreements to refuse to participate in the Program injured consumers in New York by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the agreements to refuse to participate in the Program forced New York State to pay substantial additional sums for prescription drugs provided to beneficiaries of the Program.

#### *Description of the Proposed Consent Orders*

The proposed order would require Empire to cease and desist from organizing or encouraging any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party prescription plan, such as the Program. The proposed order would prohibit Empire, for ten years, from continuing any meeting at which representatives of pharmacy firms exchange information about whether they will enter into or refuse to enter

into any third-party prescription plan. The proposed order would also prohibit Empire, for ten years, from communicating to any pharmacy firm the decision or intention of any other pharmacy firm to enter into or refuse to enter into any third-party prescription plan. The proposed order would also prohibit Empire, for eight years, from providing comments or advice to any pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party prescription plan. The proposed order would allow Empire to communicate purely factual information describing the terms and conditions of any third-party prescription plan.

The proposed order would not prohibit Empire from petitioning the government on matters involving legislation, rules, programs or procedures. The order also would permit Empire to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, Empire could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott the third-party prescription plan.

The proposed order would require Empire to distribute a copy of the order to certain employees and others. The proposed order also would require Empire to file compliance reports, to retain certain documents, and to notify the Commission of changes that may affect compliance with the orders.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

The proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by Empire that the law has been violated as alleged in the complaint.

#### Agreement Containing Consent Order to Cease and Desist

Docket No. 9239

In the Matter of Capital Area Pharmaceutical Society, a corporation.

The agreement herein, by and between Capital Area Pharmaceutical Society, a corporation, by its duly authorized officer, hereafter sometimes referred to as respondent, and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business at Pine West Plaza IV, Washington Avenue Extension, Albany, New York 12205.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 15.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to respondent, (1) Issue its decision

containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

#### Order

I

For purposes of this Order, the following definitions shall apply:

A. *CAPS* means the Capital Area Pharmaceutical Society and its directors, committees, officers, representatives, agents, employees, successors and assigns;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and any of the above which contract with the State of New York or other governmental units to provide health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or

written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's, sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

## II

*It is ordered* that CAPS, directly, indirectly, or through any corporate or other device, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this Order becomes final, organizing, sponsoring, or facilitating a meeting that CAPS expects or reasonably should expect will facilitate communications concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement, or from continuing a meeting of representatives of pharmacy firms at which: (1) CAPS fails to eject from the meeting a person who makes any such communication; or (2) two persons make any such communications;

C. For a period of ten (10) years after the date this Order becomes final, communicating to any pharmacist or pharmacy firm any information concerning any other pharmacy firm's intention or decision with respect to

entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

D. For a period of eight (8) years after the date this Order becomes final, providing comments or advice to any pharmacist or pharmacy firm on the desirability or appropriateness or participating in any existing or proposed participation agreement. However, nothing in this paragraph shall prohibit CAPS from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers; and

Provided that nothing in this Order shall be construed to prevent CAPS from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

## III

It is further ordered that CAPS:

A. Distribute by first-class mail a copy of this Order and the accompanying complaint to each of its members within thirty (30) days after the date this Order becomes final;

B. Publish this Order and the accompanying complaint in an issue of the CAPS newsletter or in any successor publication published no later than sixty (60) days after the date this Order becomes final, in the same type size normally used for articles that are published in the CAPS Newsletter or successor publication;

C. For a period of five (5) years after the date this Order becomes final, provide each new CAPS member with a copy of this Order at the time the member is accepted into membership;

D. File a verified, written report with the Commission within ninety (90) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to CAPS, require, setting forth in detail the manner and form in which it has complied and is complying with the Order;

E. For a period of five (5) years after the date this Order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of

this order, including, but not limited to, all documents generated by CAPS or that come into CAPS's possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

F. Notify the Commission at least thirty (30) days prior to any proposed change in CAPS such as, assignment or sale resulting in the emergence of a successor corporation or association, change of name, change of address, dissolution, or any other change that may affect compliance with this Order.

### Agreement Containing Consent Order To Cease and Desist As To Respondent Alan Kadish

*Docket No. 9239*

In the Matter of Capital Area Pharmaceutical Society, a corporation; and Alan Kadish, an individual.

The agreement herein, by and between Alan Kadish, an individual, hereafter sometimes referred to as respondent, and his attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Mr. Kadish resides at 24 Quincy Court, Goldens Bridge, New York 10526. His office and principal place of business are at Kadish Pharmacy, 670 North Broadway, White Plains, New York 10603.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violation of section 5 of the Federal Trade Commission Act.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60)

days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's rules, the Commission may, without further notice to respondent, (1) Issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address, as stated in this agreement, shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

#### Order

#### I

For purposes of this Order, the following definitions shall apply:

A. *Mr. Kadish* means Alan Kadish, his representatives, agents, and employees;

B. *Third-party payer* means any person or entity that provides a program or plan pursuant to which such a person or entity agrees to pay for prescriptions

dispensed by pharmacies to individuals described in such plan or program as eligible for such coverage ("Covered Persons"), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Cross and Blue Shield plans; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; and health benefits programs for government employees, retirees and dependents;

C. *Participation agreement* means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a pharmacy for the dispensing of prescription drugs to Covered Persons, and the pharmacy agrees to accept such payment from the third-party payer for such prescriptions dispensed during the term of the agreement;

D. *Pharmacy firm* means any partnership, sole proprietorship or corporation, including all of its subsidiaries, affiliates, divisions and joint ventures, that owns, controls or operates one or more pharmacies, including the directors, officers, employees, and agents, of such partnership, sole proprietorship or corporation as well as the directors, officers, employees, and agents of such partnership's sole proprietorship's or corporation's subsidiaries, affiliates, divisions and joint ventures. The words "subsidiary", "affiliate", and "joint venture" refer to any firm in which there is partial (10% or more) or total ownership or control between corporations.

#### II

It is ordered that Mr. Kadish, directly, indirectly, or through any device, in or in connection with his activities in or affecting commerce, as "commerce" is defined in section 4 of the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing, encouraging, continuing, cooperating in, or carrying out any agreement between or among pharmacy firms, either express or implied, to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into, any participation agreement;

B. For a period of ten (10) years after the date this order becomes final, continuing to attend, in the capacity of an officer or a director of any society or association of pharmacists or pharmacy firms, a formal or informal meeting of representatives of pharmacy firms not owned or controlled by Mr. Kadish or

Mr. Kadish's employer after (1) any person makes any statement concerning one or more firms' intentions or decisions with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement and such person is not ejected from the meeting, or (2) two persons make such statements;

C. For a period of ten (10) years after the date this order becomes final, communicating to any pharmacist not employed by Mr. Kadish or Mr. Kadish's employer or any pharmacy firm not owned or controlled by Mr. Kadish or Mr. Kadish's employer any information concerning any pharmacy firm's intention or decision with respect to entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; and

D. For a period of eight (8) years after the date this order becomes final, providing comments or advice to any pharmacist not employed by Mr. Kadish or Mr. Kadish's employer or to any pharmacy firm not owned or controlled by Mr. Kadish or Mr. Kadish's employer on the desirability or appropriateness of participating in any existing or proposed participating agreement. However, nothing in this paragraph shall prohibit Mr. Kadish from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payers.

Provided that nothing in this Order shall be construed to prevent Mr. Kadish from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body, concerning legislation, rules, programs or procedures, or to participate in any federal or state administrative or judicial proceeding.

#### III

*It is further ordered* that Mr. Kadish:

A. Shall file a verified, written report with the Commission within ninety (90) days after the date this order becomes final, and annually thereafter for five years on the anniversary of the date this order was served, and at such other times as the Commission may, by written notice to Mr. Kadish, require, setting forth in detail the manner and form in which he has complied and is complying with the order;

B. For a period of five (5) years after the date of service of this order, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Part II of the order, including, but not limited to, all documents generated by Mr. Kadish or that come into his possession, custody, or control regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement; and

C. Notify the Commission within thirty (30) days of any change that may affect compliance with the order.

#### Analysis of Proposed Consent Orders to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, two agreements to proposed consent orders. The agreements are from the Capital Area Pharmaceutical Society ("CAPS"), and Alan Kadish, an individual ("Kadish") ("respondents").

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the commission will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

#### Description of Complaint

The complaints issued by the Commission on March 15, 1990, allege that members of CAPS and Kadish agreed to refuse to participate in the New York State Employees Prescription Program ("Program"). The complaint alleges that the agreements coerced the State of New York into raising the prices paid to pharmacies. More specifically, the complaint alleges the following facts:

CAPS is an association of pharmacists who practice or reside in the Albany, New York area. In 1986, CAPS was affiliated with other local, county, and specialty pharmacy societies, including the Pharmaceutical Society of the State of New York ("PSSNY") Alan Kadish was President of PSSNY in 1986.

Customers often receive prescriptions through health benefit programs under which third-party payers compensate the pharmacy according to a predetermined formula. The Program is a prescription drug benefit plan that covers approximately 500,000 beneficiaries. New York State selected PAID Prescriptions, Inc. to administer the Program. Pharmacies that participate

in the Program accept as payment in full a reimbursement of the ingredient cost of the drug and a professional fee for dispensing the drug. In 1986, members of CAPS participated in many prescription drug benefit plans, including the Program as it existed prior to July 1.

The complaint alleges that, in May 1986, PAID Prescriptions, Inc. solicited pharmacies to participate in the Program under terms that would go into effect on July 1, 1986. Among the proposed terms were changes in the reimbursement for ingredient costs, an increase in the professional fee, and the offer of additional reimbursement for the use of generic drugs. The proposed terms were intended to reduce the price the State paid for the Program, and thus minimize costs, and yet to offer reimbursement high enough to attract a sufficient number of participating pharmacies. Members of CAPS would have suffered a loss of customers if their competitors had participated in the Program at a time when they were not participating.

The complaint alleges that during 1986, New York State informed PSSNY and Kadish in his capacity as President of PSSNY of the proposed terms of the Program and PSSNY communicated this information to its affiliated societies, including CAPS. CAPS held meetings at which owners of pharmacy firms informed other owners of pharmacy firms that they would not participate in the Program. Respondents communicated to pharmacists and pharmacy owners information regarding the intentions of pharmacy firms located throughout the state concerning participation in the Program. Kadish exhorted pharmacy owners to refuse to participate in the Program. The complaint further alleges that through these exchanges of information and other acts, and through the activities of CAPS and Kadish, members of CAPS and Kadish and other owners of pharmacy firms agreed to refuse to participate in the Program at the proposed reimbursement level, for the purpose of increasing the level of reimbursement offered by the State of New York under the Program.

The complaint alleges that the agreements to refuse to participate in the Program injured consumers in New York by reducing competition among pharmacy firms with respect to third-party prescription plans. Furthermore, the agreements to refuse to participate in the Program forced New York State to pay substantial additional sums for prescription drugs provided to beneficiaries of the Program.

#### Description of the Proposed Consent Orders

The proposed orders would require CAPS and Kadish to cease and desist from organizing or encouraging any agreement among pharmacy firms to withdraw from or refuse to enter into a third-party prescription plan, such as the Program. The proposed orders would prohibit CAPS, for ten years, from continuing any meeting and Kadish, in his capacity as an officer or director of a society, for ten years, from continuing to attend any meeting at which representatives of pharmacy firms exchange information about whether they will enter into or refuse to enter into any third-party prescription plan. The proposed orders would also prohibit CAPS and Kadish, for ten years, from communicating to any pharmacy firm the decision or intention of any other pharmacy firm to enter into or refuse to enter into any third-party prescription plan. The proposed orders would also prohibit CAPS and Kadish, for eight years, from providing comments or advice to any pharmacy firm on the desirability or appropriateness of entering into or refusing to enter into any third-party prescription plan. The proposed orders would allow respondents to communicate purely factual information describing the terms and conditions of any third-party prescription plan.

The proposed orders would not prohibit CAPS or Kadish from petitioning the government on matters involving legislation, rules, programs or procedures. The orders also would permit respondents to provide comments or advice to pharmacy firms concerning the desirability or appropriateness of a third-party prescription plan as part of a genuine effort to petition the government, as long as the comments or advice did not have the purpose or effect of encouraging an agreement to withdraw from or refuse to enter into the third-party prescription plan. For example, a respondent could suggest arguments to present to legislators in criticizing a government-sponsored third-party prescription plan in order to encourage pharmacy firms to lobby for changes in the terms of the plan, so long as it did not do so as a sham to encourage pharmacy firms to boycott the third-party prescription plan.

The proposed CAPS order would require CAPS to distribute a copy of the order to certain employees and others. The proposed orders would require each respondent to file compliance reports, to retain certain documents, and to notify

the Commission of changes that may affect compliance with the orders.

The purpose of this analysis is to facilitate public comment on the proposed orders, and is not intended to constitute an official interpretation of the agreements and proposed orders or to modify their terms in any way.

The proposed consent orders have been entered into for settlement purposes only, and do not constitute an admission by either of the respondents that the law has been violated as alleged in the complaint.

By the Commission, Commissioner Azcuenaga dissenting.

Donald S. Clark,

Secretary.

[FR Doc. 90-25620 Filed 10-29-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3307]

**Twin Star Productions, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an infomercial marketing corporation and six individuals, all based in Scottsdale, Arizona, from making specified representations regarding the efficacy of certain purported weight loss, baldness and impotence products; from making unsubstantiated efficacy claims concerning weight loss, baldness and impotence for any products or services; from using endorsements, unless the respondents have good reason to believe that the endorsements reflect the honest opinion or belief of the endorser; from disseminating four different infomercials, including a 30-minute advertisement for a book; and from misrepresenting that their commercials are independent programs and not paid advertising. In addition, the consent order requires the corporation and five of the six individuals to pay a total of \$1.5 million in consumer redress.

**DATES:** Complaint and Order issued October 2, 1990.<sup>1</sup>

**FOR FURTHER INFORMATION CONTACT:** Tracy Thorleifson, Seattle Regional Office, Federal Trade Commission, 2806

Federal Bldg., 915 Second Ave., Seattle, WA 98174. (206) 442-4656.

**SUPPLEMENTARY INFORMATION:** On Wednesday, April 26, 1990, there was published in the *Federal Register*, 55 FR 17494, a proposed consent agreement with analysis in the Matter of Twin Star Productions, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 90-25619 Filed 10-29-90; 8:45 am]

BILLING CODE 6750-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. 90F-0321]

**Ciba-Geigy Corp.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris (3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6-(1H, 3H, 5H) trione as an antioxidant for polymethylpentene homopolymers used in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409 (b)(5) (21 U.S.C. 348(b)(5))), notice is given that Ciba-Geigy Corp., Seven Skyline Dr., Hawthorne, NY 10532-2188, has filed a petition (FAB 0B4219) proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris (3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-

2, 4, 6-(1H, 3H, 5H) trione as an antioxidant for polymethylpentene homopolymers used in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25600 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0310]

**The Goodyear Tire and Rubber Co.; Filing of Food Additive Petition**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that The Goodyear Tire and Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,11-(3,6,9-trioxaundecyl)bis-3-(dodecylthio)propionate as an antioxidant for can and cements used in contact with food.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that The Goodyear Tire and Rubber Co., Akron, OH 44316-0001, has filed a petition (FAP 0B4223), proposing that the food additive regulations be amended to provide for the safe use of 1,11-(3,6,9-trioxaundecyl)bis-3-(dodecylthio)propionate as an antioxidant for can end cements used in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be

<sup>1</sup> Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25601 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90F-0443]

#### Hoechst Celanese Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes.

**FOR FURTHER INFORMATION CONTACT:** Laura M. Tarantino, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Hoechst Celanese Corp., Route 202-206 North, Somerville, NJ 08876, has filed a petition (FAP OA4225) proposing that the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: October 23, 1990.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 90-25601 Filed 10-29-90; 8:45 am]

BILLING CODE 4160-01-M

#### Office of Human Development Services

#### Federal Council on the Aging; Meeting

**AGENCY HOLDING THE MEETING:** Federal Council on the Aging, HHS.

**TIME AND DATE:** Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, November 14, 1990, and begins at 9 a.m. and ends at 5 p.m., on Thursday, November 15, 1990.

**PLACE:** On Wednesday, November 14 and Thursday, November 15, from 9 a.m. to 5 p.m., in (Conference room to be announced) of the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

**STATUS:** Meeting is open to the public.

**CONTACT PERSON:** Kevin W. Parks, room 4280, Wilbur Cohen Federal Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 619-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given to the Federal Advisory Committee Act (Pub. L. 92-453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold its first quarterly meeting for FY 91 on November 14 and 15, 1990, from 9 a.m. to 5 p.m. respectively at the Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20024.

*The agenda will include:* The Council's regular business meeting during the morning session on November 14 from 9 to 10:30 a.m. and a presentation by the Nutritionist from the Texas Department on Aging and others about the Older Americans Act Nutrition program from 10:30 a.m. to 12 noon. The afternoon session will begin at 1:30 p.m. and end at 5 p.m. and will be devoted to background information about the evolution of the Older Americans Act and the 1991 Amendment issues. Congressional Aging Committee staff and representatives from various national aging organizations will make presentations about current issues and concerns.

On Thursday, November 15, the day long session will be devoted to a discussion about model mental health programs and methods for assisting

older persons and their caregivers in accessing community based mental health services.

Dated: October 23, 1990.

Ingrid C. Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 90-25568 Filed 10-29-90; 8:45 am]

BILLING CODE 4130-01-M

#### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; AIDS Research Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Clinical Research Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on December 3-4, 1990, in the Regency Room at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The entire meeting will be open to the public from 9 a.m. on December 3 to adjournment at 5 p.m. on December 4. The committee will discuss the status of parallel track, review the AIDS Clinical Trials Group Recompensation plan, examine the role of the committee in the evaluation of unproven therapies, and plan for the next meeting. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301-496-5717) will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, Division of Acquired Immunodeficiency Syndrome, NIAID, NIH, Control Data Building, Room 201N, telephone (301-496-0545), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855 Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: October 22, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-25545 Filed 10-29-90; 8:45 am]

BILLING CODE 4410-01-M