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UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

COMMISSIONERS: William E. Kovacic, Chairman
Pamela Jones Harbour
Jon Leibowitz
J. Thomas Rosch

File No. [insert]

ORDER TO FILE SPECIAL REPORT

Pursuant to a resolution of the Federal Trade Commission dated [insert], entitled “Resolution Directing Use of Compulsory Process,” a copy of which is enclosed, Company A is ordered to file a Special Report with the Commission not later than [insert], containing the information specified herein. Much of the information requested for this report is to be filed electronically.

The Special Report is required to be subscribed and sworn to by an official of Company A who has prepared or supervised the preparation of the Special Report from books, records, correspondence, and other data and material in the your possession.

The Special Report should restate each item of this Order with which the corresponding answer is identified. If any question cannot be answered fully, give such information as is available to you and explain how and why your answer is incomplete.

Please supply written answers to each of the following twelve questions:

1. The subscriber to your report is to give his or her full name and business address and state his or her official capacity.
2. State the full name of Company A, its official address, and its date and state of incorporation.
3. State whether Company A is a subsidiary company; and if so, identify the full

¹ For your information, under the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For this information request, that number is [insert].

name and official address of its ultimate parent company.²

4. A. If Company A is a subsidiary company, identify all other direct and indirect subsidiary companies of Company A's ultimate parent company, and for each such subsidiary company: (1) provide its full name and address; (2) identify its direct parent company and all of its direct subsidiary companies; and (3) state whether it has any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco.
 - B. If Company A is not a subsidiary company, identify all of Company A's direct and indirect subsidiary companies, and for each such subsidiary company: (1) provide its full name and address; (2) identify its direct parent company and all of its direct subsidiary companies; and (3) state whether it has any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco.
5. Report the net (*i.e.*, after accounting for returns) pounds of smokeless tobacco sold in the United States by "the Company" during calendar year ____.³ This

² For the purposes of this Order, the term "subsidiary company" shall mean a company that is controlled by another entity; the term "parent company" shall mean an entity that controls another company; and the term "ultimate parent company" shall mean the highest level parent company that is not controlled by another entity.

Furthermore, for purposes of this Order, the term "control" (as used in the terms "control(s)" and "controlled") shall mean: (a) holding 50 percent or more of the outstanding voting securities of an issuer; (b) in the case of an entity that has no outstanding voting securities, having the right to 50 percent or more of the profits of the entity, or having the right in the event of dissolution to 50 percent or more of the assets of the entity; or (c) being the managing partner in a partnership, even if such managing partner has a minority ownership interest in the partnership.

³ For the purposes of this Order, the term "the Company" shall mean: Company A; all entities identified in response to Questions 3 and 4, above that have any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco; and all other entities related through common ownership or common governance that have any involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco. The term "company" shall not, however, include any entity: (1) whose only involvement in the manufacturing, labeling, advertising, promotion, marketing, development, offering for sale, sale, or distribution of smokeless tobacco is as a convenience store, supermarket, gas station, pharmacy, or other retailer; (2) which sells smokeless tobacco products that are not manufactured or imported by the company; and (3) for which sales of smokeless tobacco products and smokeless tobacco related merchandise constitute less than 25% of its total retail

includes units given for free to retailers for subsequent sale to consumers. Report sales in whole pounds.

6. Report the net (*i.e.*, after accounting for returns) number of smokeless tobacco product units sold in the United States by the Company during calendar year ____ in individual packages containing:
 - (a) less than 1 ounce of smokeless tobacco;
 - (b) from 1 ounce to less than 2 ounces of smokeless tobacco;
 - (c) from 2 ounces to less than 5 ounces of smokeless tobacco;
 - (d) from 5 ounces to less than 10 ounces of smokeless tobacco;
 - (e) from 10 ounces to less than 15 ounces of smokeless tobacco;
 - (f) 15 ounces or more of smokeless tobacco.This includes units given for free to retailers for subsequent sale to consumers. Each unit sold should be reported in the smallest size package in which it could have been sold to consumers. For example, a can roll consisting of ten individual cans each containing 1¼ ounce of moist snuff should be reported as ten units in category 6(b) and *not* as one unit in category 6(e).
7. Report the net (*i.e.*, after accounting for returns) dollar value of smokeless tobacco sold in the United States by the Company, excluding free samples, during calendar year _____. Report dollar sales value in whole dollars.
8. Report the net (*i.e.*, after accounting for returns) number of smokeless tobacco product units given away in the United States⁴ by the Company during calendar year ____ in individual packages containing:
 - (a) less than 1 ounce of smokeless tobacco;
 - (b) from 1 ounce to less than 2 ounces of smokeless tobacco;

sales.

Furthermore, for the purposes of this Order, the term “United States,” when used in a geographical sense, includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the United States territorial possessions (including Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island).

In addition, for the purposes of this Order, the phrase “sold in the United States” shall include all sales: (a) within the United States; (b) to members of the Armed Forces of the United States located outside the United States; or (c) for delivery to a vessel or aircraft of the Armed Forces of the United States, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States.

⁴ For the purposes of this Order, the phrase “given away in the United States” shall include all smokeless tobacco product given away: (a) within the United States; (b) to members of the Armed Forces of the United States located outside the United States; or (c) for delivery to a vessel or aircraft of the Armed Forces of the United States, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States.

- (c) from 2 ounces to less than 5 ounces of smokeless tobacco;
- (d) from 5 ounces to less than 10 ounces of smokeless tobacco;
- (e) from 10 ounces to less than 15 ounces of smokeless tobacco;
- (f) 15 ounces or more of smokeless tobacco.

This should include all smokeless tobacco product units distributed for free, whether through sampling, coupons for free product, “buy 3, get 1 free” type offers, or otherwise, as long as such smokeless tobacco product units were not reported as sold in response to Question 6, above. Each unit given away should be reported in the smallest size package in which it could have been given away to consumers.

- 9. Report the dollar amount expended in calendar year ____ by the Company on smokeless tobacco advertising, merchandising, or promotion in the United States in each category specified in items 19 through 46 of the Smokeless Tobacco Special Report Datafile.⁵ This request is in addition to the request for the electronic “Smokeless Tobacco Report Datafile.”
- 10A. State whether the Company or any other persons working for or on behalf of the Company paid any money or compensation, or made any other contribution (including but not limited to, goods or services, including free smokeless tobacco) in connection with any production or filming of any motion picture(s) or television show(s) during calendar year _____. If so, please state which show(s) or movie(s), and the dollar value of each payment or contribution.
- 10B. State whether the Company or any other persons working for or on behalf of the Company paid any money or compensation, or made any other contribution (including, but not limited to, goods or services, including free smokeless tobacco) during calendar year _____ to any individual, partnership or corporation engaged in the business of product placement in motion pictures or television

⁵ For the purposes of this Order, the term “advertising” refers to all activities relating to smokeless tobacco that are intended or likely to be seen or heard by members of the public, regardless of whether they refer or relate to a brand or brands of smokeless tobacco.

The term “smokeless tobacco advertising” does not refer to and should not be construed to include: (a) company or divisional names, when used as such, other than in an advertisement relating to smokeless tobacco; (b) signs on factories, plants, warehouses and other facilities related to the manufacture or storage of smokeless tobacco; (c) corporate or financial reports; (d) communications to security holders of the Company and to others who customarily receive such communications; (e) employment advertising; or (f) advertisements directed to youth or their parents that are intended to reduce youth use of smokeless tobacco products.

Furthermore, for the purposes of this Order, the phrase “advertising, merchandising, or promotion in the United States” shall include all advertising, merchandising, or promotion: (a) within the United States; or (b) to members of the Armed Forces of the United States.

shows. If so, please identify: the person who made the contribution; the recipient of the payment or contribution; the nature and amount of the payment or contribution; and the name of each and every motion picture or television show in which any of the Company's smokeless tobacco products or smokeless tobacco brand imagery appeared in return for such payment or contribution.

- 10C. State whether the Company or any other persons working for or on behalf of any of the Company sought or solicited the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery in any motion picture(s) or television show(s) during calendar year _____. If so, please state which show(s) or movie(s).
- 10D. State whether the Company or any other persons working for or on behalf of the Company granted approval or otherwise gave permission for the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery in any motion picture(s) or television show(s) during calendar year _____. If so, please state which show(s) or movie(s).
- 10E. State whether the Company or any other persons working for or on behalf of the Company sought or solicited the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery, or granted approval or otherwise gave permission for the appearance of any smokeless tobacco product or any smokeless tobacco brand imagery, in any video appearing on the Internet, including but not limited to sites providing user-generated content, during calendar year _____.
11. To the extent that such information is possessed by the Company or any other persons working for or on behalf of the Company, identify each and every televised event that was aired in calendar year _____ during which the name, logo, or an image of any portion of the package of any brand or variety of smokeless tobacco product sold by the Company appeared on television through televised coverage of sponsored events, teams, or individuals.
12. Report the dollar amount expended during calendar year _____ by the Company in the United States on advertisements directed to youth or their parents that are intended to reduce youth use of smokeless tobacco products.⁶

For each question 5 through 12, above, if the information responsive to the question exists only within subsidiaries, it is permissible to submit separate reports from each subsidiary with responsive information subscribed and sworn to by an official of each such subsidiary, who has prepared or supervised the preparation of the report from books, records, correspondence, and other data and material in its possession. In such case, an official of Company A must still

⁶ For purposes of this Order, the term "youth" means persons younger than eighteen years of age.

submit a report subscribing and swearing that the subsidiaries' reports submitted constitute all relevant information for Company A and its subsidiaries, and that no contrary information exists. The written report or reports may be submitted in either paper form or as a .pdf file. In either case, the paper document(s) or the .pdf file(s) must include the signature(s) of the above-referenced official(s) attesting to the accuracy of the Company's report.

INSTRUCTIONS FOR COMPLETION OF THE SMOKELESS TOBACCO REPORT DATAFILE

EXPLANATION OF DATAFILE STRUCTURE:

The Commission is requesting brand-specific information from the Company in a computer-readable format. Attachment A provides the datafile structure and indicates how the data for each record should be recorded.

Information for each brand variety of smokeless tobacco sold in the United States by the Company during the calendar year ____ (including brand varieties sold in a test market or on a limited market basis) should be entered as a separate entry. "Brand" means smokeless tobacco products that bear a common identifying name or make, regardless of whether the products are differentiated by size or packaging. "Variety" refers to characteristics that differentiate products within a brand family, such as whether the product is snuff or chewing tobacco, or is regular or flavored. In the case of generic and private label smokeless tobacco products, "brand variety" refers to all indistinguishable products produced by a single manufacturer or its affiliates or imported by a single importer or its affiliates.

There are 52 separate pieces of information ("fields") requested for each brand variety. Each field is entered according to the specifications indicated on Attachment A. The following section contains explanations of the fields requested for the calendar year ____ Smokeless Tobacco Special Report Datafile.

This Order provides that sales data and certain other information are to be reported separately for each variety of smokeless tobacco product produced by the Company. However, the Commission is requesting that expenditures on smokeless tobacco advertising, merchandising, or promotion in the United States be reported only at the brand level, rather than at the variety level. Therefore, each brand should have an "Overall brand" record for which you should: (a) complete Fields 1-6, and 25-52; and (b) leave empty Fields 7-24. Each brand should also have a record for each smokeless tobacco variety within the brand, for which you should: (a) complete Fields 1-23; and (b) leave empty Fields 24-52.⁷

The Commission is also requesting that expenditures on smokeless tobacco advertising,

⁷ For example, a brand with one variety will have two records (an overall brand record and a record specific to that one variety); a brand with 20 varieties will have 21 records (an overall brand record and a record specific to each of the 20 varieties).

merchandising, or promotion in the United States that are not attributable to or in connection with any specific brand be reported in a “Non-brand specific” record. For this “Non-brand specific” record: (a) complete Fields 1-3, and 25-52; and (b) leave Fields 4-24 empty. Examples of such expenditures might include, among others, Category A expenses advertising or promoting all smokeless tobacco generally or all of the Company’s smokeless tobacco products but not any specific brand of smokeless tobacco, Category Q expenses, and Category W expenses.

The Commission uses Microsoft Access 2002 database software. It will also accept database and spreadsheet data in the following formats: MS Excel, tab-delimited, or comma-delimited.

FIELD DEFINITIONS:

- (1) **YEAR COVERED:** Refers to the calendar year for which data or other information is being reported. Entered as ‘20XX’.

The next 3 fields in the record will be used to create a unique identifier for each brand variety of smokeless tobacco. The Company should enter the Company Code; the Commission will enter the brand and variety identification codes.

- (2) **COMPANY CODE:** Enter assigned letter:

Reynolds American	A
Swisher	B
North Atlantic	C
UST	E
Swedish Match	F

- (3) **BRAND NUMBER:** FTC will assign these numbers. For the “Non-brand specific” record, enter the value 99.
- (4) **VARIETY CODE:** FTC will assign these numbers. For the “Overall brand” record, enter the value 99.

The next three fields include the brand name and characteristics that make the variety unique. These are:

- (5) **BRAND NAME:** Refers to the brand identified on the packaging or in advertising. If the product is generic or private label, indicate “GENERIC” and complete a separate record for each distinct variety.
- (6) **PRODUCT TYPE:** Refers to the type of product, that is, moist or scotch snuff, loose-leaf or plug chewing tobacco, etc. The Commission has assigned a code letter for various product types. Enter the appropriate letter:

Looseleaf	A	Chewing Tobacco	B
Plug	C	Twist	D

Scotch Snuff	E	Dry Snuff	F
Moist Snuff	G	Other	H

If a brand has varieties that fall into more than one product type, then enter the letter M for the “Overall brand” record.

- (7) **VARIETY DESCRIPTION:** Refers to any additional description as identified on the packaging or in advertising. The description typically includes characteristics such as grade of tobacco, flavor, and other advertised characteristics of the product.

The next 16 fields are used to record the net pounds sold, the net dollar value of those sales, the net number of units sold of each size category, the net number of units given away of each size category, and any starting or ending dates. Each unit sold should be reported in just one size category and should be reported in the smallest size category in which the unit could have been sold to consumers.

- (8) **POUNDS SOLD:** Report one figure for total pounds of the brand variety sold in the United States during calendar year ____, net of the number of pounds of this variety that were returned. Include smokeless tobacco given for free to retailers for subsequent sale to consumers. Please round to the nearest whole pound. For the “Overall brand” record, leave this field blank.
- (9) **DOLLAR SALES:** Report one figure for the dollar value of this variety’s sales in the United States during calendar year ____, net of the value of this variety’s returns. Please do not express in units of thousands or millions. For the “Overall brand” record, leave this field blank.
- (10) **UNITS SOLD-A:** Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing less than one ounce of smokeless tobacco product, net of the number of units of this variety that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.
- (11) **UNITS SOLD-B:** Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing at least one ounce and less than two ounces of smokeless tobacco product, net of the number that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.
- (12) **UNITS SOLD-C:** Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing at least two ounces and less than five ounces of smokeless tobacco product, net of the number that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.
- (13) **UNITS SOLD-D:** Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing at least five ounces and

less than ten ounces of smokeless tobacco product, net of the number that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.

- (14) UNITS SOLD-E: Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing at least ten ounces and less than fifteen ounces of smokeless tobacco product, net of the number that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.
- (15) UNITS SOLD-F: Report the number of individual units of the brand variety sold in the United States during calendar year ____ in packages containing fifteen ounces or more of smokeless tobacco product, net of the number that were returned. This includes units given for free to retailers for subsequent sale to consumers. For the “Overall brand” record, leave this field blank.
- (16) UNITS GIVEN-A: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing less than one ounce of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.
- (17) UNITS GIVEN-B: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing at least one ounce and less than two ounces of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.
- (18) UNITS GIVEN-C: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing at least two ounces and less than five ounces of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.
- (19) UNITS GIVEN-D: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing at least five ounces and less than ten ounces of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.
- (20) UNITS GIVEN-E: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing at least ten ounces and less than fifteen ounces of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.
- (21) UNITS GIVEN-F: Report the number of individual units of the brand variety given away in the United States during calendar year ____ in packages containing fifteen ounces or more of smokeless tobacco product, net of the number that were returned. For the “Overall brand” record, leave this field blank.

- (22) FIRST SALES DATE: This item should be completed only if the brand variety was first offered for sale during calendar year _____. Report as YYMMDD (no slashes)
- (23) LAST SALES DATE: This item should be completed only if sales of the brand variety were discontinued during calendar year _____. Report as YYMMDD (no slashes)
- (24) VARIETY-PERCENT: This is a calculated field for FTC use. It should be left blank.

The next 28 fields are used to record “Reportable Expenditures,” that is, smokeless tobacco advertising, merchandising, and promotional expenditures in the United States for the specific categories requested by the FTC, as well as the total and sporting events totals. Please provide information for items 25 through 52 in thousands of dollars. Expenditures may be rounded to the nearest thousand dollars. For example \$1,234,567 should be reported as either 1234.567 or 1235, not 1234567.

- (25) CAT-A-EXP (Category-A Expenses): Newspaper advertising but excluding, if practicable, those expenditures covered by Categories L through V, which should be reported in those categories.
- (26) CAT-B-EXP (Category-B Expenses): Magazine advertising but excluding, if practicable, those expenditures covered by Categories L through V, which should be reported in those categories.
- (27) CAT-C-EXP (Category-C Expenses): Outdoor advertising but excluding, if practicable, those expenditures covered by Category E or Categories L through V, which should be reported in those categories. “Outdoor advertising” means (1) billboards, (2) signs and placards in arenas, stadiums, and shopping malls, whether any of the foregoing are open air or enclosed, and (3) any other advertisements placed outdoors regardless of their size, including those on smokeless tobacco product retailer property.
- (28) CAT-D-EXP (Category-D Expenses): All expenditures for audio-visual or video advertising on any medium of electronic communication not subject to the jurisdiction of the Federal Communications Commission. This category includes, but is not limited to, advertisements on: screens at motion picture theaters, television screens or monitors in residential dwellings, as in certain televised programs and through video cassette or DVD entertainment products; and television screens or monitors in commercial establishments, such as video arcades. This category does not include expenditures for advertising on the Internet, which should be reported in Categories W or X below.
- (29) CAT-E-EXP (Category-E Expenses): Transit advertising but excluding, if practicable, those expenditures covered by Categories L through V, which should be reported in those categories. “Transit advertising” means advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport or any other transportation facility.
- (30) CAT-F-EXP (Category-F Expenses): Direct mail advertising but excluding, if

practicable, those expenditures covered by Categories L through V or Category X, which should be reported in those categories.

- (31) CAT-G-EXP (Category-G Expenses): Point-of-sale advertising but excluding, if practicable, those expenditures covered by Category C or Categories L through V, which should be reported in those categories.
- (32) CAT-H-EXP (Category-H Expenses): Price discounts paid to smokeless tobacco product retailers or wholesalers in order to reduce the price of smokeless tobacco products to consumers, including off-invoice discounts, buy downs, voluntary price reductions, and trade programs, but excluding retail value added expenditures for promotions involving free smokeless tobacco products (*e.g.*, buy two, get one free) covered by Category U and expenditures involving coupons covered by Category T, which should be reported in those categories.
- (33) CAT-I-EXP (Category-I Expenses): Promotional allowances paid to smokeless tobacco product retailers in order to facilitate the sale or placement of any smokeless tobacco product, including payments for stocking, shelving, displaying and merchandising brands, volume rebates, incentive payments, and the cost of smokeless tobacco product given for free to retailers for subsequent sale to consumers, but excluding, if practicable, those expenditures covered by Categories A through H, which should be reported in those categories.
- (34) CAT-J-EXP (Category-J Expenses): Promotional allowances paid to smokeless tobacco product wholesalers in order to facilitate the sale or placement of any smokeless tobacco product, including payments for volume rebates, incentive payments, value added services, promotional execution and satisfaction of reporting requirements but excluding, if practicable, those expenditures covered by Categories A through I, which should be reported in those categories.
- (35) CAT-K-EXP (Category-K Expenses): Promotional allowances paid to any persons other than retailers, wholesalers, and full-time company employees who are involved in the smokeless tobacco product distribution and sales process in order to facilitate the sale or placement of any smokeless tobacco product but excluding, if practicable, those expenditures covered by Categories A through J, which should be reported in those categories.
- (36) CAT-L-EXP (Category-L-Expenses): Sampling of smokeless tobacco products, including the costs of the smokeless tobacco products themselves, all associated excise taxes, and the costs of organizing, promoting and conducting sampling. Sampling includes the distribution of smokeless tobacco products for consumer testing or evaluation when consumers are able to use the smokeless tobacco products outside of a facility owned or operated by the Company or its agents, but the cost of actual clinical testing or market research associated with such smokeless tobacco product distributions should not be reported. Coupons distributed for free smokeless tobacco product, with no purchase or payment required to obtain the coupons or smokeless tobacco product,

should be reported in this category. When reporting expenses associated with such coupons for free smokeless tobacco product, the value reported should include: (a) the total redemption expense (including expenses for payments to retailers or vendors for processing) for such coupons in the calendar year, as determined under Generally Accepted Accounting Principles; and (b) all other costs associated with such coupons incurred in the calendar year, including but not limited to costs associated with advertising, promotion, design, printing, and distribution.

- (37) CAT-M-EXP (Category-M Expenses): All costs of distributing any item (other than smokeless tobacco products, items the sole function of which is to advertise or promote smokeless tobacco products, or written or electronic publications), whether distributed by sale, redemption of coupons, or otherwise, that bears the name, logo, or an image of any portion of the package of any brand or variety of smokeless tobacco product sold by the Company. The expenditures reported in this category shall be the net cost to the Company, *i.e.*, payments received from consumers for such items shall be deducted. Whenever such activities are combined with smokeless tobacco product sampling, the expenditures connected therewith shall be reported solely in Category L. When such activities are combined with the sale of smokeless tobacco products, such as when a non-smokeless tobacco product item is blister-packed to a package or packages of smokeless tobacco products, the expenditures connected therewith shall be reported solely in Category V.
- (38) CAT-N-EXP (Category-N Expenses): All costs of distributing any item (other than smokeless tobacco products, items the sole function of which is to advertise or promote smokeless tobacco products, or written or electronic publications), whether distributed by sale, redemption of coupons, or otherwise, that does not bear the name, logo, or an image of any portion of the package of any brand or variety of smokeless tobacco product sold by the Company. The expenditures reported in this category shall be the net cost to the Company, *i.e.*, payments received from consumers for such items shall be deducted. Whenever such activities are combined with smokeless tobacco product sampling, the expenditures connected therewith shall be reported solely in Category L. When such activities are combined with the sale of smokeless tobacco products, such as when a non-smokeless tobacco product item is blister-packed to a package or packages of smokeless tobacco products, the expenditures connected therewith shall be reported solely in Category V.
- (39) CAT-O-EXP (Category-O Expenses): Public entertainment events bearing or otherwise displaying the name or logo or an image of any portion of the package of any of the Company's smokeless tobacco products or otherwise referring or relating to smokeless tobacco products, which take place in an adult-only facility. For the purposes of this Order, the term "adult-only facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe that no underage person is present. A facility or restricted area need not be permanently restricted to adults in order to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no underage person is present during the event or time period in question. Furthermore, for purposes of this Order, the term

“underage” means younger than eighteen years of age. This item includes all expenditures made by the Company in promoting and/or sponsoring such events.

- (40) CAT-P-EXP (Category-P Expenses): Public entertainment events (including but not limited to concerts and sporting events) bearing or otherwise displaying the name, logo, or an image of any portion of the package of any of the Company’s smokeless tobacco products or otherwise referring or relating to smokeless tobacco products, which do not take place in an adult-only facility. This item includes all expenditures made by the Company in promoting and/or sponsoring such events.
- (41) CAT-Q-EXP (Category-Q Expenses): Public entertainment events (including but not limited to concerts and sporting events) bearing or otherwise displaying the name of the Company or any variation thereof but not bearing or otherwise displaying the name, logo, or an image of any portion of the package of any of its smokeless tobacco products or otherwise referring or relating to smokeless tobacco products. This item includes all expenditures made by the Company in promoting and/or sponsoring such events.
- (42) CAT-R-EXP (Category-R Expenses): Endorsements, testimonials, and product placement. This item includes but is not limited to all expenditures made to procure smokeless tobacco product use, or the mention of a smokeless tobacco product or company name, or the appearance of a smokeless tobacco product or name, logo, or package, in any situation (*e.g.*, motion picture, television show or program, stage show, public appearance by a celebrity) where such use, mention or appearance may come to the attention of the public.
- (43) CAT-S-EXP (Category-S Expenses): Sponsorship of sports teams or individual athletes but excluding, if practicable, those expenditures covered by Category R, which should be reported in that category. “Sports teams or individual athletes” includes but is not limited to competitors in football, basketball, baseball, hockey, tennis, wrestling, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, and hunting events, competitions, tournaments, and races.
- (44) CAT-T-EXP (Category-T Expenses): All expenditures and costs associated with coupons for the reduction of the retail cost of smokeless tobacco products (whether redeemed at the point of sale or by mail), including: (a) the total redemption expense (including expenses for payments to retailers or vendors for processing) for such coupons in the calendar year, as determined under Generally Accepted Accounting Principles; and (b) all other costs associated with such coupons incurred in the calendar year, including but not limited to costs associated with advertising, promotion, design, printing, and distribution. Coupons distributed for smokeless tobacco products, with no purchase or payment required to obtain the coupons or smokeless tobacco products, should be reported in Category L.
- (45) CAT-U-EXP (Category-U Expenses): Retail value added expenditures for promotions involving free smokeless tobacco products (*e.g.*, buy two, get one free), whether or not

the free smokeless tobacco products are physically bundled together with the purchased smokeless tobacco products, including all expenditures and costs associated with the value added to the purchase of smokeless tobacco products (*e.g.*, all associated excise taxes paid on the free smokeless tobacco products).

- (46) CAT-V-EXP (Category-V Expenses): Retail value added expenditures for promotions involving free non-smokeless tobacco products items (*e.g.*, buy two, get a key chain) including all expenditures and costs associated with the value added to the purchase of smokeless tobacco products.
- (47) CAT-W-EXP (Category-W Expenses): All expenditures for advertising on any company Internet web site that can be accessed by computers located in the United States, regardless of where the site is located or the Internet address of the site or page.
- (48) CAT-X-EXP (Category-X Expenses): All expenditures for advertising on the Internet, other than on the Company's own Internet web site, including but not limited to the World Wide Web, commercial on-line services, and electronic mail messages. This category includes, but is not limited to: spending on all Internet sites and pages, hyperlinks and banners on third-party sites, newsgroups, and on-line advertisements that can be accessed by computers located in the United States, regardless of where the site is located or the Internet address of the site or page; all direct mail advertising using electronic mail messages; and all sites and pages, hyperlinks and banners on third-party sites, newsgroups, or electronic mail messages that include the name, logo, symbol, motto, or selling message of a brand of smokeless tobacco products, or are referred to in any other smokeless tobacco product advertisement, regardless of whether the site, page, hyperlink, banner, or electronic mail message is promoting the sale of smokeless tobacco products. Expenditures include but are not limited to the cost of developing, creating, maintaining, monitoring, and updating the site, page, banner, or other form of on-line advertising, whether located on systems maintained by the Company or by third-party advertisers, commercial online services, or Internet World Wide Web host providers.
- (49) CAT-Y-EXP (Category-Y Expenses): All expenditures for telephone advertising. This category includes but is not limited to costs associated with the placement of telemarketing calls or the maintenance or operation of incoming telephone lines that allow consumers to participate in any promotion or hear pre-recorded product messages, but excludes costs associated with having customer service representatives available for responding to consumer complaints or questions.
- (50) CAT-Z-EXP (Category-Z Expenses): Any advertising or promotional expenditures not covered by another reporting category. Specify the total amount on the form and briefly describe the specific subject matter of each such expenditure.
- (51) TOT-ADV-EXP (Total Reportable Expenditures): Refers to reportable expenditures for the variety as defined in the appropriate explanatory notes. The figure provided for total reportable expenditures should equal the sum of the expenses listed in Categories A through Z for the variety.

- (52) **SPORTS-EXP (Sports and Sporting Events):** The expenditures reported in this category are intended to be duplicative of expenditures listed above on lines 25 through 50 and totaled on line 51. Do not report any expenditures on this line that have not also been reported on lines 25 through 50. For example, sponsorship of a sporting event that is reported on line 40 or 41 would also be reported on line 52; and a miscellaneous expenditure for sponsoring a sports or racing team would be reported on lines 43 and 52. “Sports and sporting events” includes but is not limited to football, basketball, baseball, hockey, tennis, wrestling, karate, judo, weight lifting, volleyball, skiing, skating, sailing, boating, equestrian, rodeo, automobile, race car, funny car, motorcycle, bicycle, truck, monster truck, tractor-pull, fishing, and hunting events, competitions, tournaments, and races.

Report all items that include but are not limited to all expenditures connected with or related to the sponsoring, advertising, or promotion of sports or sporting events, including any racing or automotive events, support of an individual, group, sports, or racing team, and purchase of or support for sports or racing equipment, uniforms, sports or racing facilities and or training facilities, and all expenditures for advertising including but not limited to print, television, radio, billboards, banners, etc. in the name of the Company or any of its smokeless tobacco product brands in a sports or racing facility, on a scoreboard or in conjunction with the reporting of sports or racing results; and all expenditures connected with the production, offer, sale, or provision without fee of all functional promotional items at or in connection with a sporting or racing event, including but not limited to, clothing, hats, bags, posters, sporting or racing goods, and equipment.

OTHER EXPLANATORY NOTES

Reportable expenditures, that is, expenditures on lines 25 through 50, should be included in only one category, except for any amounts also reported on line 52 (sports). Expenditures on lines 25 through 50 should equal the total on line 51, and should reflect the cost to the Company of administering the activity involved, including commissions and other payments made to separate organizations such as advertising agencies. In addition, expenditures reported on lines 25 through 50 should include all expenditures for advertising and promotion relating to smokeless tobacco regardless of whether the advertising or promotion would constitute “commercial speech” or would be protected from law enforcement action by the First Amendment. However, expenditures should not include the compensation of full-time employees of the Company or any overhead expenses attributable to the activities of company employees.

The financial accounting procedure to be used in assigning an expenditure to a particular calendar year shall be the accrual rather than the cash basis of accounting.

You are advised that penalties may be imposed under applicable provisions of federal law for failure to file special reports or for filing false reports.

The Special Report called for in this Order is to be filed on or before [insert].

By direction of the Commission.

William E. Kovacic, Chairman

SEAL

Date of Order: [insert]

The Report required by this Order, or any inquiry concerning it, should be addressed to the attention of:

Shira Modell
Federal Trade Commission
Division of Advertising Practices
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

smodell@ftc.gov