Telephone: (202) 307–6316, jade.eaton@usdoj.gov.

United States of America, Plaintiff,

v.

Morgan Stanley, Defendant.

Civil Action No.

Final Judgment

Whereas Plaintiff United States of America filed its Complaint alleging that Defendant Morgan Stanley (''Morgan'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Morgan, through their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, for settlement purposes only, and without this Final Judgment constituting any evidence against or an admission by Morgan for any purpose with respect to any claim or allegation contained in the Complaint:

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed:*

I. Jurisdiction

This Court has jurisdiction of the subject matter herein and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted to the United States against Morgan under Sections 1 and 4 of the Sherman Act, 15 U.S.C. 1 and 4.

II. Applicability

This Final Judgment applies to Morgan and each of its successors, assigns, and to all other persons in active concert or participation with it who shall have received actual notice of the Settlement Agreement and Order by personal service or otherwise.

III. Relief

A. Within thirty (30) days of the entry of this Final Judgment, Morgan shall pay to the United States the sum of four million eight hundred thousand dollars ($4,800,000.00).

B. The payment specified above shall be made by wire transfer. Before making the transfer, Morgan shall contact Janie Ingalls, of the Antitrust Division's Antitrust Documents Group, at (202) 514–2481 for wire transfer instructions.

C. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon from the date of default to the date of payment.

IV. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions. Upon notification by the United States to the Court of Morgan's payment of the funds required by Section III above, this Section IV will have no further force or effect.

V. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and Plaintiff's responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge.

[FR Doc. 2011–26161 Filed 10–7–11; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 10–11]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Monday, October 17, 2011: 10:30 a.m.—Issuance of Proposed Decisions in claims against Libya; 3 p.m.—Oral hearings on objections to Commission's Proposed Decisions in Claim Nos.LIB–II–128, LIB–II–129, LIB–II–130 and LIB–II–131.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Suite 6002, Washington, DC 20579. *Telephone:* (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2011–26305 Filed 10–6–11; 4:15 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

DATES: *Time and Date:* 8 a.m. to 4:30 p.m. on Wednesday, November 2, 2011, 8 a.m. to 4:30 p.m. on Thursday, November 28, 2011.

PLACE: National Corrections Academy, 11900 East Cornell Avenue, Aurora, CO 80014, 1 (303) 338–6600.

MATTERS TO BE CONSIDERED: Important trends in corrections-related policy, program, and practices; identifying and meeting the needs of the field of corrections; Performance Based Outcomes; Director's report; Federal Partners Reports; Presentations.

CONTACT PERSON FOR MORE INFORMATION: Thomas Beauclair, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 2011–25880 Filed 10–7–11; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0018]

Curtis-Straus LLC; Application for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Curtis-Straus LLC for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to deny this application for renewal of NRTL recognition.

DATES: Submit information or comments, or a request to extend the comment period, on or before November 10, 2011. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If submissions, including attachments, are no longer than 10 pages, commenters may fax submissions to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, or messenger or courier service: Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2010–0018, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. The Docket Office accepts deliveries (hand, express mail, and messenger and courier service) during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.—4:45 p.m., E.T.

Instructions: All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA–2010–0018). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and will make these submissions available online at *http://www.regulations.gov*.

Docket: To read or download submissions or other material in the docket (*e.g.,* exhibits listed below), go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. The *http://www.regulations.gov* index lists all documents in the docket; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period on or before November 10, 2011 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Acting Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210; *telephone:* (202) 693–2110. For information about the NRTL Program, go to *http://www.osha.gov*, and select ''N'' in the site index.

SUPPLEMENTARY INFORMATION:

I. Notice of Application for Renewal of Recognition

The Occupational Safety and Health Administration (OSHA) is providing notice that Curtis-Straus LLC (CSL) applied for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL). (See Ex. 2—CSL renewal application dated 06/04/2004.)[1] OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. Interested parties may access these pages from OSHA's Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*. Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the product testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

II. General Background on the Application

A. CSL's Application

CSL applied to OSHA for its initial recognition in February 1998 when it was a limited liability company chartered in the Commonwealth of Massachusetts. After processing the application, including performing the necessary on-site assessments, OSHA announced its preliminary finding on the application in a notice published in the **Federal Register** on December 13, 1999 (64 FR 69552). Following the requisite comment period, OSHA issued a notice in the **Federal Register** on May 8, 2000, announcing its final decision to recognize CSL as an NRTL (65 FR 26637). In May of 2005, Bureau Veritas Consumer Products Services, Inc. (BVCPS) acquired CSL; Bureau Veritas Holdings, Inc. owns BVCPS; Bureau Veritas SA (BVSA) owns Bureau Veritas Holding, Inc., and Wendel Investissement (Wendel) owns BVSA. Through various intermediaries, Wendel owns 58% of CSL. As of May 2011, Wendel also owns approximately 11% of Legrand (see Ex. 10—CSL letter to OSHA dated 08/01/2011), a manufacturer of electrical products based in France. Legrand has world-wide operations in many other European countries, Canada, Mexico, various South American countries, and China, as well as other parts of Asia (see Legrand Group ''Facts and Figures,'' *http://www.legrandgroup.com/EN/2010-facts-and-figures_12506.html).*

Wendel describes itself as ''one of the most prominent listed investment companies in Europe. Its philosophy is to invest for the long term, as a majority or principal shareholder, in listed or unlisted companies with leadership positions, so as to accelerate their own growth and business development'' (*http://www.wendel-investissement.com/en/profil-strategie_uk.html*). Wendel subsequently acquired additional manufacturers, such as Campagnie Deutsche, a manufacturer of industrial and automotive electrical connectors, some of which may require NRTL certification prior to use in the workplace. Wendel has the potential to acquire additional companies that manufacture products that require NRTL testing and certification.

On June 4, 2004, CSL submitted its renewal application. On April 27, 2007, OSHA informed CSL by letter that CSL appeared not to meet the NRTL Program policy on independence under

[1] A number of documents, or information within documents, described in this **Federal Register** notice are the applicant's internal, detailed procedures, or contain other confidential business or trade-secret information. These documents and information, designated by an ''NA'' at the end of, or within, the sentence or paragraph describing them, are not available to the public.

Appendix C of the NRTL Program Directive (OSHA Instruction CPL 01–00–003–CPL 1–0.3) due to BVSA's acquisition of CSL (see Ex. 3—OSHA letter to CSL, dated 04/27/2007). In that letter, OSHA asked CSL to provide clear and convincing evidence (NRTL Program Directive, Appendix C.V, OSHA Instruction CPL 01–00–003–CPL 1–0.3) that pressures (*i.e.,* undue influences) do not exist as a result of its organizational affiliation with Legrand that could compromise CSL's NRTL testing and certification processes. CSL responded to OSHA on August 27, 2007, and supplemented this response on January 31, 2008, (see Ex. 4—CSL letter to OSHA, dated 08/27/2007, and Ex. 5—CSL letter to OSHA, dated 01/31/2008). To rebut the presumption of pressures, CSL described the ''longstanding integrity'' of BVSA and CSL, and claimed an ''attenuated'' relationship existed between CSL and Legrand. It also argued that the Compliance Committee implemented by CSL, as well as the objectivity of CSL's testing program, would mitigate any undue influence. A follow-up response from CSL received by OSHA on January 31, 2008, argued that ''firewalls'' existed to assure the independence of CSL's testing and certification processes (Ex. 5, pp. 1–4). These ''firewalls'' were measures or factors that CSL claimed will mitigate or prevent undue influence on its NRTL activities. CSL's firewalls included a separation of its board of directors from other Legrand companies, use of independent auditors, and establishment of the Compliance Committee. The letter also asserted that the presence of common executives and board members between Legrand, Wendel, and BVSA does not compromise CSL's testing and certification because ''there is no reason to believe that [the board members] would seek to cause a complex international conspiracy to compromise CSL'' (Ex. 5, p. 2).

OSHA responded to CSL on August 14, 2008 (see Ex. 6—OSHA letter to CSL, dated 08/14/2008), and reiterated the following concerns about CSL's independence: (1) The substantial relationship [2] that arises from Wendel's common ownership of both Legrand, a manufacturer, and CSL, an NRTL; (2) the common executives and board members shared between BVSA, CSL, Wendel, and Legrand; (3) how CSL will monitor Wendel's future acquisitions; (4) how CSL can warrant to OSHA that it would not test or certify either Legrand's or its competitor's products; (5) how CSL will comply with the requirements of the International Federation of Inspection Agencies (IFIA) [3] that auditors be independent of the testing organization; and (6) how CSL will ensure the personnel performing the audits have the necessary qualifications.

On February 20, 2009, CSL responded by letter (see Ex. 7—CSL letter to OSHA, dated 02/20/2009) describing its efforts to: (1) Monitor Wendel's acquisitions; (2) perform enhanced certification procedures on products manufactured by subsidiaries and other companies organizationally affiliated with Wendel; and (3) use both external and internal audits to ensure that CSL maintains its independence. CSL asserted that it would accomplish these efforts through extensive procedures it has in place to identify public Wendel subsidiaries, its conflict management procedures that require additional witnessing and review of test data on products produced by Wendel subsidiaries, audits by internal compliance officers, and IFIA membership. It also informed OSHA that it was changing its executive leadership and augmenting its board of directors with additional independent directors to dilute the potential for undue influence upon the board. However, the mutual board members shared between BVSA, Legrand, and Wendel would remain on the board. OSHA fully considered CSL's efforts to rebut the presumption of undue influence. However, on January 19, 2010, the Agency responded with a negative finding of renewal (see Ex. 8—OSHA negative finding of renewal, dated 01/19/2010). OSHA based its decision, in part, on concerns that OSHA would not be able to effectively monitor CSL's efforts, even if CSL made good-faith efforts, because of the extent and complexity of Wendel and Legrand's operations. OSHA does not have the resources or expertise to monitor all of Wendel's and Legrand's acquisitions, products, and operations.

In response to the negative finding of renewal, CSL submitted a revised application on October 18, 2010 (see Ex. 9—CSL revised renewal application, dated 10/18/2010). The revised application reiterated its commitment to objective testing, the procedures of the CSL Compliance Committee, and requirements of the external audits. CSL also proposed a temporary limitation, in which CSL would limit its testing and certification to existing customers and products. On August 1, 2011, CSL notified OSHA that Wendel reduced its ownership of Legrand from 32% to 11.1% (Ex. 10). However, as described below, the revised application and reduction in ownership fail to address the fundamental violation of the NRTL independence requirement.

B. The NRTL Independence Policy

OSHA requires NRTLs and applicants to be ''completely independent'' of the manufacturers of the equipment the NRTLs are testing (see 29 CFR 1910.7(b)(3)). This independence requirement is fundamental to the third-party testing and certification system. Early in the NRTL Program, OSHA extended the practices that two NRTLs—Underwriters Laboratories (UL) and Factory Mutual Research Corporation (FMRC)—instituted in their testing and certification programs. These practices included having no affiliations with (*i.e.,* being independent of) the manufacturers of the equipment they certified. Therefore, independence is the cornerstone of the NRTL Program, the purpose of which is to ensure that the organizations testing and certifying specified products as safe have no affiliation with the manufacturers of the products or with employers that use the products in the workplace.

The NRTL Program Directive that was in effect when CSL applied for NRTL recognition stated that, to meet the independence requirement, NRTLs and applicants ''must be free from commercial, financial and other pressures that could compromise the results of its testing and certification processes'' (see NRTL Program Policies, Procedures, and Guidelines—CPL 01–00–003—CPL 1–0.3 (NRTL Program Directive), Appendix C.V). The Directive makes it clear that NRTLs and applicants must avoid these pressures from manufacturers of equipment.

Under its independence policy, OSHA presumes that ''pressures'' exist if there is a substantial relationship between the NRTL or applicant and a manufacturer ''of products that must be certified which could compromise the objectivity and impartiality in determining the results of its testing and certification processes.'' Substantial, for purposes of the policy, ''means of such a nature and extent as to exert undue influence on the testing and certification processes.''

[2] The definition of ''substantial relationship'' includes when a major owner of a supplier of products requiring NRTL certification has an ownership interest in excess of two percent in an NRTL (see NRTL Program Policies, Procedures, and Guidelines—CPL 01–00–003–CPL 1–0.3 (NRTL Program Directive), Appendix C.V(C)).

[3] The IFIA is a trade association that represents companies involved in international testing, inspection, and certification services. It requires members to adhere to a compliance code that includes independent auditing by IFIA for compliance with IFIA standards (see ''About Us'' IFIA, *http://www.ifia-federation.org/content/about-us*).

In some limited situations, the policy allows OSHA to prescribe ''conditions'' on NRTLs or applicants for initial or continued recognition, even when the Agency determines that pressures exist. Such conditions, however, ''must be consistent with the policy,'' in that they must effectively eliminate the pressures stemming from the substantial relationship. The Directive also provides examples of options OSHA may consider when imposing conditions: (1) Restricting the suppliers for whom the NRTL or applicant may test and certify products; or (2) restricting the type of products the NRTL or applicant may test and certify.

Whether imposing conditions on an NRTL or applicant is appropriate is a judgment made by the Agency on a case-by-case basis. OSHA has discretion whether to impose conditions in a particular case. The independence policy does not *require* OSHA to impose conditions; it only *allows* OSHA to impose conditions. When organizations cannot effectively eliminate pressures stemming from a substantial relationship, then OSHA cannot impose conditions ''consistent with the policy.'' Accordingly, OSHA can impose conditions only in those rare instances when the substantial relationships cause ''minimal'' pressures.

In analyzing these situations, OSHA must carefully examine the ownership situation; the types of products at issue; the scope and magnitude of the NRTL's or applicant's operations; the scope and magnitude of the operations of the manufacturers making, and the employers using, the products; and other factors. OSHA also must consider the degree to which it can monitor the NRTL or applicant's compliance with any imposed conditions, which is a particularly important factor. OSHA typically audits NRTLs once a year to ensure they continue to meet the NRTL requirements, including the independence requirement, and to maintain the quality of their testing and certification operations. If imposing conditions on an NRTL or applicant would be difficult or impossible for OSHA to audit effectively, imposing conditions on the NRTL or applicant would not be appropriate.

OSHA believes its policy on NRTL independence is a straightforward approach for judging an NRTL's or applicant's compliance with the Agency's independence requirement under 29 CFR 1910.7. OSHA cannot perform in-depth analyses of an NRTL's or applicant's ownership or financial relationship and interests. Therefore, the NRTL or applicant has the burden of showing it is independent, and that any relationship with a manufacturer or employer involves no, or only minor, pressures.

III. General Finding of Non-Independence

A. CSL Has a ''Substantial Relationship'' With Legrand

Wendel Investissement (Wendel) owns, at least in part, both CSL and Legrand (a manufacturer). Wendel owns 58% of CSL and 11% of Legrand through various intermediaries. Legrand is a manufacturer of various products, many of which require NRTL certification if used in the workplace. Under the NRTL independence policy, this relationship constitutes a ''substantial relationship,'' in which a major owner of a supplier of products requiring NRTL certification has an ownership interest in excess of two percent in CSL, an NRTL. Because of this substantial relationship, OSHA presumes that pressures exist on CSL that could compromise the results of its testing and certification processes and that CSL, therefore, is not independent.

B. CSL Failed To Rebut the Presumption of Pressures

CSL attempted to rebut the presumption of pressures. In various letters to the Agency, CSL explained why it believes it is not subject to pressures from Wendel or Legrand that could compromise the results of its testing and certification processes. CSL stated that its relationship to Legrand is highly attenuated and that its decision making is independent of both Wendel and Legrand (Ex. 9, p. 3). To rebut the presumption of pressures, CSL also proposed that it renew temporarily only product certifications for existing customers not associated with Wendel (Ex. 9 pp. 1, 10). Finally, CSL claimed that it took a variety of steps to ensure that it will not test or certify any products made by Legrand (Ex. 9, pp. 10–12). The Agency carefully considered this information, and finds that CSL did not adequately rebut the presumption of pressures, as discussed below.

1. CSL's Independence From Legrand and Wendel

To rebut the presumption of pressure, CSL contended that ''the relationship of Legrand or other Wendel holdings is highly attenuated'' (Ex. 9, p. 3) and, as such, does not result in undue pressure on CSL. CSL argues that Wendel is a long-term investor that does not manage CSL's day-to-day operations. CSL also noted that Wendel does not exert control over CSL, therefore assuring CSL's independence from Wendel and Legrand.

CSL's assertion that Wendel does not manage, or exert control over, CSL does not address the fundamental issue regarding the control that a parent company has over a subsidiary (*e.g.,* a majority-owned subsidiary). According to the Securities and Exchange Commission, the term ''control'' in this context means the ''possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise'' (see 17 CFR 230.405). The parent company of a majority-owned subsidiary, in this case CSL, has ultimate control over the subsidiary, even though the parent company may delegate some of that control to the subsidiary. A parent company can exert control by changing a subsidiary's policies and leadership, and even by selling the subsidiary. Therefore, because Wendel has the power to dictate and influence CSL's actions, CSL does not have decision-making independence.

Although CSL claims an ''attenuated'' connection to Wendel, CSL did not provide any assurances that Wendel will refrain from exerting control over CSL, or pressuring CSL through Bureau Veritas. To the contrary, Wendel has a corporate policy that encourages exerting control over Bureau Veritas and CSL. Wendel's Web site states that its ''policy is to be the key or controlling shareholder in its listed or unlisted investments on a long-term and hands-on basis. It expresses this commitment by actively participating in these companies' strategic decisions, based on the principle of direct, constructive and transparent give-and-take with their managers'' (*http://www.wendel-investissement.com/en/charte-de-lactionnaire_83.html*). Furthermore, although CSL notified OSHA that Wendel reduced its percentage ownership of Legrand from 32% to 11% in 2011 (Ex. 10), CSL did not provide any assurance that this reduction in ownership eliminated Wendel's control over CSL. Furthermore, Wendel can increase its ownership interest in CSL at any time. Although OSHA could impose a condition to limit such an increase in ownership, the fundamental issue of Wendel's control over CSL would remain.

2. CSL's Organizational Relationship to Wendel and Legrand

CSL also claims that, because no member of its Board of Managers has ''significant ties'' to any of BVSA's parent companies, there is little

opportunity for these companies to exert pressures on CSL (Ex. 9, p. 18). OSHA finds that the current organizational relationship between CSL and Wendel via BVSA does not rebut the presumption of pressures. When Wendel first purchased CSL, BVSA and CSL shared two key executives (Mr. Piedelievre, who was a member of BVSA's management board, as well as CSL's chairman, and Mr. Tardan, who also was on BVSA's management board and is CSL's treasurer). To date, Wendel and BVSA share one board member. According to the Web site of Wendel and BVSA, Ernest-Antoine Seillière is the Chairman of Wendel's Supervisory Board, as well as a member of BVSA's Board of Directors (see *http://www.bureauveritas.com/wps/wcm/connect/bv_com/Group/Home/Investors/Corporate_governance* and *http://www.wendel-investissement.com/en/members_32.html*).

Furthermore, CSL asserted that individuals affiliated with Wendel and Legrand are no longer members of its Board of Managers (see Ex. 7). However, based on the information CSL provided, several BVSA-affiliated members remain on CSL's board: John Beisheim is Vice President of Acquisitions and Risk Management at BVCPS and Oliver Butler is a Senior Vice President of BVCPS (Ex. 7, p. 2). BVCPS is a subsidiary of BVSA, which is a subsidiary of Wendel. This arrangement perpetuates a direct line of communication and influence between Wendel and CSL by way of BVSA and senior officers at BVCPS. CSL provided no information to OSHA regarding the removal of members of its board who also were members of Legrand's, Wendel's, and BVSA's boards. These associations make Wendel privy to the BVSA's Board of Director's deliberations on behalf of CSL. Because of the close linkages, the potential remains for Wendel to influence CSL's testing and certification operations. Furthermore, since Wendel benefits from Legrand's success as a manufacturer of NRTL-certified products, the presumption is that pressures from Wendel could compromise CSL's testing and certification processes with regard to these Legrand products. In summary, the modifications CSL made to its Board of Managers provided little organizational separation between CSL and Wendel and, therefore, do not adequately rebut the presumption of pressures.

3. Missing Information Regarding Ownership and Subsidiaries

OSHA has concerns regarding entities that own intermediary companies between Legrand and Wendel, the companies these intermediaries own, and the business lines of these companies. The organizational chart provided by CSL on January 31, 2008 (Ex. 5; Ex. 1), fails to show the part owners of a number of these intermediaries. CSL also provided no information on the new intermediate owner of BVSA. Also missing is the name of intermediate companies owned by Wendel's subsidiaries. OSHA requested this information on August 14, 2008, but CSL repeatedly failed to provide the information required to address OSHA's concerns.

4. Temporary Limitation to Certifications

In its revised application, submitted October 18, 2010 (see Ex. 9), CSL requested that OSHA renew CSL's recognition by imposing a limitation that would restrict CSL to ''only renew existing NRTL product certifications for existing customers * * * until the matter of ownership of [CSL] is resolved to OSHA's satisfaction.'' CSL argued that this limitation would eliminate the presumption of pressure or other concerns regarding Wendel's ownership of CSL or the content of Wendel's holdings. CSL claimed that this approach would address OSHA's concerns regarding undue pressure because none of its existing customers had affiliations with Wendel. This limitation does not address OSHA's concerns adequately. The Agency must examine carefully the ownership situation; the types of products at issue; the scope and magnitude of the NRTL's and applicant's operations; the scope and magnitude of the operations of manufacturers making, and the employers using, the products; and other factors. OSHA also must consider the degree to which it can monitor NRTL compliance with such a condition.

As proposed by CSL, the limitation would be temporary and, therefore, would not resolve the ultimate independence issue. CSL would remain organizationally affiliated with Wendel, a situation in which Wendel could exert undue pressure on CSL. For instance, CSL's current NRTL certifications include testing for the standard UL 60950, which covers products made by Legrand. Under CSL's proposal, Wendel could still exert pressure on CSL to reject similar products made by Legrand's competitors.

Furthermore, CSL claimed that the proposed condition is a ''self regulating'' limitation that OSHA could audit easily. However, Wendel's operations are so vast that OSHA seriously doubts that CSL could effectively enforce the proposed condition. In this regard, Legrand is a world-wide enterprise with operations and affiliates in the U.S., Europe, Canada, Mexico, South America, China, and other Asian countries. One of these affiliates, Bticino, has operations in 60 countries. Wendel's 2007 annual report states that Legrand acquired 15 suppliers or manufacturers during the preceding three years, and the 2008 annual report describes Legrand as having a 19% market share of products and systems for electrical installations, and offering nearly 170,000 products. Moreover, CSL reports that it currently has 203 outstanding certifications distributed among 78 customers. Accordingly, it is infeasible for either OSHA or CSL to monitor every merger and acquisition of CSL's customers to ensure that none of these transactions involve a Wendel subsidiary. This infeasibility, along with the temporary status of this proposed condition, makes it an unacceptable option to resolve CSL's independence issue.

5. Corporate-Compliance Program

CSL established a compliance program that includes participation in various ethics programs, as well as formation of a Compliance Committee of CSL's Board consisting of independent managers to ''assure that there are no pressures to distort its NRTL testing and certifications'' (Ex. 9, p. 10). CSL also noted that Bureau Veritas is a member of the IFIA, which CSL claimed ''assure[s] independence with respect to * * * certifications'' as a part of the IFIA's ethical requirements (Ex. 9, p. 12). The ethical programs include both internal and external audits. Furthermore, CSL claimed that its conflict-management procedures require that it test and certify all products ''independently of all of its clients. It does not design or manufacture products that it tests or certifies'' (Ex. 9, p. 10). However, implementation of this compliance program does not rebut the presumption of pressures.

First, OSHA does not allow an NRTL to ''self certify'' its independence. Second, CSL's policy does not address the fundamental ownership conflict (*i.e.,* that Wendel still can assert control over CSL's operations). Regardless of the ethical and auditing programs in place, Wendel can revise CSL's policies and operations, including its corporate-compliance program. A corporate-compliance program will not mitigate this relationship and the control that Wendel can assert on CSL. Furthermore, as noted above, Wendel's operations are so vast that OSHA believes that CSL

cannot self regulate its independence effectively through a corporate-compliance program. Moreover, OSHA does not have the resources to audit the effectiveness of such a program because the vast scope of Wendel's and Legrand's operations, including intermediary owners of Wendel and Legrand and the subsidiary companies of these intermediary owners.

C. OSHA Cannot Impose Conditions on CSL

As described above, OSHA's independence policy permits OSHA to impose conditions only when minimal pressures exist, and the conditions are consistent with the NRTL independence requirement. The extent to which OSHA may impose conditions on a manufacturer-owned NRTL depends in part on the ownership arrangement, the scope of the NRTL's recognition, and the scope of the products manufactured.

In this case, Wendel owns a substantial share of CSL and a manufacturer, rather than a small minority interest in either organization, which would severely limit the pressure it could exert on the NRTL. Furthermore, Wendel owns and operates an enormous variety of companies. Wendel could own companies that produce numerous types of products that require NRTL certification. In such cases, OSHA cannot impose conditions on CSL that are consistent with the fundamental requirement that NRTLs be independent of ''any manufacturers or vendors of equipment or material being tested for [equipment requirements]'' (see 29 CFR 1910.7(b)(3)). In this regard, OSHA must consider whether it can reasonably monitor an NRTL's compliance with the conditions. OSHA cannot monitor reliably the various CSL and Wendel ownership relationships and affiliations with the numerous subsidiaries of Wendel. As noted earlier, the Agency's policy on independence must provide a straightforward, practical approach to determining whether an organization meets the requirement for independence. Accordingly, OSHA is not requiring its staff to analyze actual or potential business activities that could cause actual or potential conflicts and pressures. When these activities are extensive, which is the case for the world-wide operations of Legrand, this information is far beyond OSHA's auditing capabilities under the NRTL Program. In summary, OSHA cannot reasonably determine with its existing resources the extent to which Wendel-affiliated companies contribute to the sale and manufacture of products submitted to CSL for NRTL testing and certification.

D. OSHA Has a Consistent Position on Conditions

CSL contended that OSHA permitted other NRTLs in positions similar to CSL's to adopt conditions that rebut the presumption of pressures (Ex. 9, p. 6). In particular, CSL argued that OSHA permitted such conditions in the cases of Intertek Testing Services NA, Inc. (Intertek), National Technical Systems, Inc. (NTS), and Wyle Laboratories, Inc. (Wyle), and that those cases indicate that OSHA also should apply conditions in CSL's case (Ex. 9, pp. 7–9). OSHA disagrees with this argument because CSL's case differs from these other cases. As mentioned above, OSHA applies conditions only in circumstances in which minimal pressures exist, and OSHA can reasonably determine and monitor the effectiveness of the conditions, and the conditions are consistent with OSHA's independence requirement.

In the Intertek case, Intertek's parent acquired, and merged into Intertek's overall laboratory operations, a small manufacturer of laboratory test equipment, Compliance Design. Consequently, Intertek lost its independence because its parent company owned a manufacturer of equipment that needed NRTL approval. OSHA, however, imposed a condition on Intertek's recognition that effectively eliminated the pressures stemming from Intertek's relationship with Compliance Design (66 FR 29178). This condition included a no-testing policy for Compliance Design and for any other manufacturer affiliated with Intertek. Although OSHA received no information showing that Intertek or its parent owned any other manufacturing interest, the Agency imposed the broader condition as a precaution. OSHA could impose this condition because, unlike CSL's situation, Compliance Design was a small company that produced just one type of product; therefore, Intertek could enforce the no-testing policy. Because of Compliance Design's limited operations, OSHA could monitor effectively Intertek's compliance with the independence policy. As noted earlier, CSL's situation is much different than Intertek's because Wendel's and Legrand's operations involve multiple products manufactured and sold by numerous and various subsidiaries, making it impossible for OSHA to impose conditions on CSL's recognition that would mitigate all of the pressures and that OSHA could monitor reasonably and effectively.

OSHA also imposed a condition on Wyle (59 FR 37509). When OSHA granted Wyle NRTL recognition, Wyle was part of an organization with a division that manufactured and distributed electronic enclosure cabinets. As with Intertek, the condition imposed on Wyle required that Wyle not test or certify any equipment that used electronic enclosures manufactured by the affiliated division. Unlike CSL's situation, this condition was easy for Wyle and OSHA to monitor because the only product at issue was electrical enclosure cabinets.

Lastly, OSHA imposed conditions on NTS (63 FR 68306). NTS was a public company that ''could conceivably perform the design and engineering services * * * for manufacturers or vendors of the products covered within the scope of the test standards for which OSHA has recognized NTS'' (63 FR 68306). Because NTS is a public company, OSHA had a concern that manufacturers or vendors could acquire ownership of NTS. Accordingly, OSHA imposed a condition on NTS that restricted it from testing and certifying products for a client to which it sells design or similar services. OSHA also required NTS to provide OSHA an opportunity to review NTS's NRTL Quality Manual, Quality Assurance Procedures, and other procedures within 30 days of certifying its first products under the NRTL Program (63 FR 68306, 68309). OSHA imposed these conditions only as a preemptive measure because there was no evidence in the record that any manufacturers or vendors owned NTS, or that NTS was providing design and engineering services to manufacturers or vendors. However, this is not the case for CSL, in which a manufacturer's direct ownership interest and the potential for indirect affiliation with numerous other manufacturers and vendors, results in a presumption of pressure that violates the NRTL independence policy.

Thus, OSHA's determination regarding the imposition of conditions on CSL's NRTL recognition is consistent with the Agency's previous actions on this issue. Although OSHA provided CSL with several opportunities to rebut the presumption of pressures, CSL did not meet its burden of demonstrating by clear and convincing evidence that pressures do not, and will not, exist that could compromise the results of its testing and certification process.

IV. Request for Renewal of Recognition

CSL seeks renewal of its recognition for the one site that OSHA previously recognized. CSL also is requesting that OSHA renew its recognition to use the

following five test standards for testing and certification of products: UL 544 Electric Medical and Dental Equipment; UL 60601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety; UL 60950 Information Technology Equipment; UL 61010A–1 Electrical Equipment for Laboratory Use, Part 1: General Requirements; and UL 61010B–1 Electrical Measuring and Test Equipment, Part 1: General Requirements.[4]

V. Preliminary Finding

Following a thorough review of the application file and other pertinent information, and for the reasons stated above, OSHA determined that CSL does not meet all of the requirements for renewal of its NRTL recognition. The NRTL Program staff, therefore, recommends preliminarily that the Assistant Secretary deny CSL's application for renewal of its NRTL recognition.

OSHA welcomes public comment as to whether CSL meets the requirements of 29 CFR 1910.7 for renewal of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments (see **DATES** above). OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the requester does not adequately justify it. To obtain or review copies of the publicly available information in CSL's application and other pertinent documents (including exhibits), and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the address listed above under **ADDRESSES**; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2010–0018.

The NRTL Program staff will review all comments submitted to the docket in a timely manner, and, after addressing the issues raised by the comments, will recommend whether to grant the renewal of NRTL recognition to CSL. The Assistant Secretary will make the final decision on granting NRTL recognition, and, in making this decision, may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR 1911.

Signed at Washington, DC on October 4, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

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[4] Each of these standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). The designations and titles of these test standards were current when OSHA prepared this notice.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of additional materials.

SUMMARY: This notice announces the opening of Nixon Presidential Historical Materials by the Richard Nixon Presidential Library and Museum, a division of the National Archives and Records Administration. Notice is hereby given that the Agency has identified, inventoried, and prepared for public access additional textual materials and sound recordings from among the Nixon Presidential Historical Materials. Furthermore, in response to the July 29, 2011, court order in the case of *In Re Petition of Stanley Kutler, et al.,* the National Archives and Records Administration (NARA) will be separately opening the transcript of President Richard M. Nixon's grand jury testimony of June 23–24, 1975, and associated materials from Record Group 460, Records of the Watergate Special Prosecution Force (WSPF); with certain information redacted as required by law, including the PRMPA. The materials associated with President Nixon's grand jury testimony include segments of five transcripts of Nixon White House taped conversations recorded in May 1971, October 1971 and April 1973 that were previously withheld under the PRMPA when the WSPF transcripts were released in June 1991. Those segments, which no longer need to be withheld, will also be released on November 10, 2011 at the National Archives at College Park, Maryland, as well as at the Nixon Library in Yorba Linda, California.

DATES: The Richard Nixon Presidential Library and Museum intends to make the materials described in this notice available to the public on Thursday, November 10, 2011, at the Richard Nixon Library and Museum's primary location in Yorba Linda, California, beginning at 9 a.m. P.S.T./12 p.m. E.S.T. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to Nixon Presidential Historical Materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense within 30 days of the publication of this notice. The formerly redacted segments of the WSPF tape transcripts associated with the grand jury testimony of President Nixon will be made available to the public in the research room of the National Archives at College Park, located at 8601 Adelphi Road, College Park, Maryland, beginning at 12 p.m. E.S.T.

ADDRESSES: The Richard Nixon Presidential Library and Museum, a division of the National Archives, is located at 18001 Yorba Linda Boulevard., Yorba Linda, California. The National Archives at College Park is located at 8601 Adelphi Road, College Park, Maryland. Researchers must have a NARA researcher card, which they may obtain when they arrive at either facility. Selections from the materials described in paragraphs 1 through 5 of this notice will be available at *http://www.nixonlibrary.gov.* The transcript of President Nixon's grand jury testimony and associated materials, which include the formerly redacted segments of the WSPF tape transcripts, will be available at *http://www.archives.gov.* Petitions asserting a legal or constitutional right or privilege that would prevent or limit public access to Nixon Presidential Historical Materials must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road., College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Timothy Naftali, Director, Richard Nixon Presidential Library and Museum, 714–983–9120.

SUPPLEMENTARY INFORMATION: In accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the