

Complaint

IN THE MATTER OF

CYTEC INDUSTRIES INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-4132; File No. 0410203**Complaint, February 28, 2005--Decision, April 7, 2005*

This consent order, among other things, requires the respondent to divest the UCB Amino Resins Business and the Fechenheim Additives Business, including facilities that produce amino resins -- which are used to promote the adhesion of rubber to materials such as steel or fiber, in products such as automotive coatings, coil coatings, can coatings, appliance coatings, and tires -- associated patents and other intellectual property, and other assets, to a buyer approved by the Commission and at no minimum price. An accompanying Order to Hold Separate and Maintain Assets requires the respondent to hold separate and maintain the viability of the UCB Amino Resins Business as a competitive operation until its transfer to the Commission-approved acquirer, and prohibits the exchange of certain material confidential information between the respondent and the UCB Amino Resins Business.

Participants

For the Commission: *Robert S. Tovsky, Sebastian Lorigo, Marc I. Alvarez, Michael H. Knight, Geary A. Gessler, Nicholas Kreisle, and Jeffrey H. Fischer.*

For the Respondent: *Stuart Meiklejohn, Sullivan & Cromwell.*

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Pursuant to the Federal Trade Commission Act and the Clayton Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Cytec Industries Inc. ("Cytec"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement to acquire the Surface Specialties division of UCB S.A. ("UCB"), a corporation subject to the jurisdiction of the Commission, and that the acquisition, if consummated, would

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result in a violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and Section 7 of the Clayton Act, 15 U.S.C. § 18, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

A. THE RESPONDENT

1. Respondent Cytec is a corporation organized, existing, and doing business under and by virtue of the laws of the United States, with its principal office and principal place of business located at 5 Garret Mountain Plaza, West Paterson, New Jersey 07424.

2. Cytec, among other things, engages in the worldwide development, manufacture, and sale of amino resins.

3. Respondent Cytec is, and at all times relevant herein has been and is now engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, 15 U.S.C. § 12, and is a corporation whose business is in or affecting commerce as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

B. THE ACQUIRED COMPANY

4. “UCB” means UCB S.A., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its registered office located at 60 Allee de la Recherche, B-1070, Brussels, Belgium.

5. Surface Specialties, one of two divisions of UCB, operates through wholly-owned subsidiaries of UCB in North and South America, Europe and Asia. Surface Specialties, which operates more than ten plants in these areas, researches, develops, manufactures, and sells a wide range of products that includes those used in the coating, bonding, and printing of surfaces.

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C. THE PROPOSED ACQUISITION

6. On October 1, 2004, Cytec and UCB announced that they had entered into a combined cash-share purchase agreement whereby Cytec would purchase UCB's Surface Specialties division for approximately \$1.8 billion.

D. THE RELEVANT MARKETS

7. For the purposes of this Complaint, the relevant product markets in which to analyze the effects of Cytec's proposed acquisition of UCB's Surface Specialties division is the research, development, manufacture, and sale of amino resins for: (1) industrial liquid coatings; and (2) adhesion promotion in rubber (primarily tire applications). The types of amino resins that Cytec and UCB manufacture are used as cross-linking agents in thermoset surface coatings for a variety of applications, including automotive coatings, coil coatings, appliance coatings, can coatings, and general maintenance coatings. In addition, these types of resins are used in tires to promote the adhesion of rubber to other materials in the tire and thereby enhance the performance and durability of the tire.

8. There are many different grades of amino resins, each of which will impart specific performance properties. Customers, such as coatings manufacturers or tire manufacturers, typically will qualify a resin for use in a particular formulation. That is, the customers will take resin samples and perform various types of laboratory and product testing to demonstrate that the resin will provide the performance they require in the application.

9. Amino resins provide a critical function for the specialized applications in which they are used, and there are no economic substitutes for amino resins in these applications. In other words, a small but significant and non-transitory price increase would not significantly affect the current level of consumption of amino resins in either of the significant end-use applications of industrial liquid coatings and rubber adhesion promotion.

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10. The relevant geographic market in which to assess the impact of the proposed acquisition is no broader than North America and potentially limited to the United States. Imports and exports of the relevant products are very limited, and the potential for interregional shipping is limited by transportation costs and duties, by the requirements for an effective distribution and service infrastructure, and due to the often time-consuming customer qualification requirements.

E. MARKET STRUCTURE

11. The markets for amino resins for industrial liquid coatings and rubber adhesion promotion are highly concentrated. Cytec and UCB are the two major competitors in the United States, accounting for over 90% of domestic sales for at least the last ten years.

12. Cytec manufactures amino resins at multiple plants in the United States, and at multiple overseas plants. UCB manufactures amino resins at one plant in the United States, one in Canada, and at multiple plants overseas.

13. Other firms also market amino resins for coatings and rubber adhesion applications, but only on a very limited basis with less advanced products.

14. Cytec and UCB, by virtue of their history of participation in the marketplace over a period of many years, have the broadest ranges of commercially available amino resin grades, and the broadest ranges of qualifications in customer applications.

15. As measured by sales, the proposed acquisition would increase concentration significantly for amino resins for industrial liquid coating and adhesion promotion in rubber, as measured by the Herfindahl-Hirschman Index ("HHI"), by almost 4000 points, to over 8000.

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F. DIRECT COMPETITION BETWEEN CYTEC AND UCB

16. Cytec and UCB compete directly with each other across an extensive array of amino resin grades used in different applications. Customers often qualify both Cytec and UCB as suppliers in order to ensure competition in pricing and other key aspects of the supply of amino resins.

G. CONDITIONS OF ENTRY AND EXPANSION

17. In order to constrain Cytec's ability to exercise market power, new entry or expansion must be able to compete on the basis on which UCB is able to compete today so as to restore the competition that exists between Cytec and UCB across the wide range of amino resin grades. Because of the time that would be required to develop the necessary capabilities, and the hurdles a potential entrant would face in trying to develop a business of the scale and scope of UCB, neither new entry nor expansion are likely to be sufficient to provide substantial constraint on Cytec's ability to exercise market power after the acquisition.

18. Other firms would lack key assets that they would require to compete effectively against Cytec. At a minimum, other firms would need to invest resources over an extended period of time in developing the formulation expertise to produce the wide range of grades Cytec and UCB have developed, and currently manufacture and market. They would also need to obtain the research and development capability to continue to improve existing product lines to meet the evolving requirements of amino resins in the applications in which they are used. Finally, in order to fully respond to the requirements of major customers at the locations where they use amino resins, firms would need to have plants as close as possible to their major customers in order to be able to supply those grades to the worldwide locations of these customers on a timely basis and at competitive prices.

19. Even if manufacturers were able to develop some grades of amino resins, the rigorous process of qualifying resins in the

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coating and tire applications in which they are used would likely make it several additional years before new competition could emerge to compete effectively against Cytec in the full range of applications in which Cytec and UCB today compete.

20. In the end, therefore, there would be no assurance that the emerging competition would be sufficient to replace the established competition that has existed between Cytec and UCB over a period of many years in the wide range of applications in which amino resins are used.

H. EFFECTS OF THE PROPOSED ACQUISITION

21. The effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the following ways, among others:

a. It will substantially increase concentration in the markets for amino resins for industrial liquid coatings and promotion of adhesion in rubber, primarily tire applications;

b. It will eliminate UCB as the only other significant competitor in the markets for amino resins for industrial liquid coatings and promotion of adhesion in rubber, primarily tire applications;

c. It will lead to higher prices and a reduced level of innovation in the markets for amino resins for industrial liquid coatings and promotion of adhesion in rubber, primarily tire applications.

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I. VIOLATIONS CHARGED

22. The acquisition agreement between Cytec and UCB, as described in paragraph 6, violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

23. The acquisition of UCB's Surface Specialties division by Cytec, if consummated, would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-eighth day of February, 2005, issues its complaint against said Respondent.

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Cytec Industries Inc. (“Cytec”) of certain assets of UCB S.A. (“UCB”), and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

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1. Respondent Cytec Industries Inc. is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business located at Five Garret Mountain Plaza, West Paterson, New Jersey 07424.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER**I.**

- A. “Cytec” means Cytec Industries Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cytec, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “UCB” means UCB S.A., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its registered office located at 60 Allée de la Recherche, B-1070, Brussels, Belgium; and all joint ventures, subsidiaries, divisions, groups, and affiliates controlled by UCB, including without limitation UCB Chemicals Corp. and UCB, Inc.
- C. “Surface Specialties” means the Surface Specialties business of UCB which Cytec agreed to acquire as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- D. “Commission” means the Federal Trade Commission.
- E. “Respondent” means Cytec Industries Inc.

- F. “Acquirer” means each Person approved by the Commission to acquire the UCB Amino Resins Business pursuant to Paragraphs II or V of this Order.
- G. “Actual Cost” means actual direct material plus actual direct labor plus allocated actual manufacturing overhead at the Suzano Amino Resins Facility, the Werndorf Amino Resins Facility and the La Llagosta Amino Resins Facility.
- H. “Acquisition” means the proposed acquisition of Surface Specialties by Cytec, as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- I. “Amino Resins” means products obtained through the addition of formaldehyde to urea, melamine or benzoguanamine and such products etherified with linear or branched aliphatic alcohols (C1-C18 atoms). This definition excludes the products obtained through the addition of formaldehyde to phenols (the phenolics), the products obtained through the addition of formaldehyde to carbamates (such as HF480 and Alvnovol VPN 1759) and the products obtained through the reaction of butylated urea formaldehyde with alkyds (plasticized urea formaldehyde resins).
- J. “Amino Resin Products” means all of those grades and types of Amino Resins currently manufactured, marketed, or sold by UCB, all of those grades and types of Amino Resins currently being researched or developed by UCB, and all of those grades and types of Amino Resins that have been researched, developed, manufactured, marketed, or sold by UCB or any predecessor any time within five years of the date this Order is accepted by the Commission for public comment. “Amino Resin Products” does not include formulated or combination products consisting of an Amino Resin and one or more polymers, other than Modacure™ resins.

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- K. “Divestiture Agreements” means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a trustee appointed pursuant to Paragraph V of this Order and an Acquirer) related to the UCB Amino Resins Business required to be divested pursuant to Paragraphs II or V of this Order and the rights or assets to be licensed or otherwise made available to the Acquirer pursuant to Paragraph II of this Order, including, but not limited to any agreement between the Respondent and the Acquirer required or permitted by or pursuant to Paragraph II.B. of this Order.
- L. “Indian Orchard Manufacturing Facility” means the industrial park owned and operated by Solutia, Inc. near Springfield, Massachusetts and the immediate vicinity.
- M. “Indian Orchard Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned, operated, leased, or otherwise within the custody or control by or on behalf of UCB and located at the Indian Orchard Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.
- N. “Fechenheim Manufacturing Facility” means the industrial park owned by AllessaChemie GmbH near Fechenheim, Germany and the immediate vicinity.
- O. “Fechenheim Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.

- P. “Fechenheim Additives” means the additives listed on Exhibit A to this Order, together with any improvements.
- Q. “Fechenheim Additives Business” means:
1. the buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives;
 2. the books, records, and files (whether stored in electronic, magnetic, paper, or any other format) located at the Fechenheim Manufacturing Facility that are related to the research, development, manufacture, marketing, sale, and distribution of the Fechenheim Additives;
 3. all of UCB’s rights in intellectual property that is used exclusively in the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives;
 4. all of UCB’s rights in any tolling agreement pursuant to which AllessaChemie GmbH produces Fechenheim Additives; and
 5. a perpetual, non-exclusive, royalty-free license, limited to the field of Fechenheim Additives, to all of UCB’s other intellectual property, as of the date this Order is accepted by the Commission for public comment, used in the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives, with a right to sub-license customers for use in connection with products the customer purchases from the Acquirer.
- R. “LaSalle Toll Agreement” means the January 31, 2003, agreement between UCB Chemicals Corp. and UCB, Inc. and Solutia Canada Inc. relating to the toll manufacture of Amino

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Resin Products for UCB at Solutia Canada Inc.'s manufacturing site in LaSalle, Quebec.

- S. "Divestiture Trustee" means the divestiture trustee(s) appointed pursuant to Paragraph V. of this Order.
- T. "Effective Date of Divestiture" means the date on which the divestiture of the UCB Amino Resins Business to the Acquirer is consummated.
- U. "Hold Separate" means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- V. "La Llagosta Amino Resins Facility" means the buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties at La Llagosta, Spain.
- W. "Monitor Trustee" means the trustee appointed pursuant to Paragraph IV. of this Order.
- X. "Confidential Business Information" means any information relating to the UCB Amino Resins Business or the Fechenheim Additives Business (but excluding the assets that are described in Paragraph I.Q.5 in the definition of that business) (before or after the divestiture required by Paragraph II of this Order) that is not in the public domain, including, but not limited to:
 - 1. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any

customers anywhere in the world at any time within five (5) years of the date this Order is accepted by the Commission for public comment; and,

2. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format) relating to the research, development, manufacture, marketing, or sale of Amino Resins anywhere in the world.

Confidential Business Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information in the Respondent's possession as of the date hereof that was not obtained from UCB pursuant to the Confidentiality Agreement dated February 20, 2004, between Cytec and UCB; (iii) information independently developed by Respondent without reference to or use of information that Respondent obtained from the UCB Amino Resins Business after February 20, 2004; (iv) information that is required by law to be disclosed; (v) information that may be contained in documents or databases that also contain Confidential Business Information but does not relate to the UCB Amino Resins Business; or (vi) information relating to the Fechenheim Additives Business that is currently used in UCB's additives business outside Fechenheim.

- Y. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity.
- Z. "Primarily Related," when used to determine the appropriate allocation of an intangible asset between the UCB Amino

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Resins Business and the other Surface Specialties businesses listed in Paragraph I.AA.35, means:

1. For an asset that has commercial application, that more than fifty percent (50%) of the revenue derived from sales of products that make use of the asset were in calendar year 2004 attributable to products sold by the other Surface Specialties businesses; and
2. For an asset that does not have commercial application as of the date this Order is accepted by the Commission for public comment, that the primary inventor of the asset was employed by one or more of those other Surface Specialties businesses.

AA. "UCB Amino Resins Business" means all assets of the UCB Surface Specialties Business anywhere in the world relating to the research, development, marketing, sale, and production of Amino Resin Products, including, but not limited to:

1. the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility;
2. an assignment of all of UCB's rights and obligations to the LaSalle Toll Agreement;
3. an assignment of all of UCB's rights and obligations to all contracts with Solutia that relate solely to the research, development, marketing, sale, and production of Amino Resin Products;
4. with respect to any contracts with Solutia that relate to the research, development, marketing, sale and production of both Amino Resin Products and other products, an assignment or other transfer (in a manner approved by the Commission) of all of UCB's rights and obligations under

such contracts that relate to the research, development, marketing, sale, and production of Amino Resin Products;

5. all real property (together with appurtenances, licenses, and permits) used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resins;
6. all patents, patent applications, copyrights, trademarks, trade names, owned by UCB, or that UCB has acquired any rights to use, that are related to the research, development, manufacture, marketing, sale, or use of Amino Resins;
7. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format), management information systems, information contained in management information systems, software, inventions, quality control data, test data, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, and all other intellectual property rights or confidential business information (in whatever form or medium), relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
8. all contracts relating to the research, manufacture, marketing, or sale, and use of Amino Resins entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
9. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Indian

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Orchard Amino Resins Facility or the Fechenheim Amino Resins Facility;

10. all warranties and guarantees, express or implied, relating to any tangible or intangible asset, including the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility, related to the research, development, manufacture, marketing, sale, and use of Amino Resins;
11. all customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;
12. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, information relating to customer qualification of Amino Resin Products, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any customers anywhere in the world at any time in the last 5 years;
13. all books, records, and files (whether stored in electronic, magnetic, paper, or any other format) relating to Amino Resins Products, together with access to any records Respondent retains to the extent necessary to permit the Acquirer to comply with applicable law or to defend itself against claims made on the basis of any liability it assumes in connection with its acquisition of the UCB Amino Resins Business and the Fechenheim Additives Business;
14. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage

facilities, and supplies relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;

15. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the research, development, manufacture, marketing, sale, and use of Amino Resins;
16. all items of prepaid expense relating to the research, development, manufacture, marketing, sale, and use of Amino Resins; and
17. any other tangible or intangible assets relating to the research and development, manufacture, marketing, distribution, or sale of Amino Resins that are reasonably necessary, in the sole discretion of the Commission, to operate the UCB Amino Resins business in a scope and manner to achieve the purposes of this Order or sufficient to remedy the harm to competition alleged in the Complaint.

Provided, however, that the UCB Amino Resins Business does not include any of the following:

18. the Werndorf Amino Resins Facility;
19. the La Llagosta Amino Resins Facility;
20. the Suzano Amino Resins Facility;
21. any assets used exclusively for the five (5) years prior to the date this Order is accepted by the Commission for public comment for the research, development, manufacture, marketing, or sale of products other than Amino Resin Products;

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22. any assets described in paragraphs I.AA.5, 10, 14 or 16 at or relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;
23. All governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;
24. Any rights in or to inventories of products, raw materials, supplies or parts, including work-in-process, but not including finished goods, to the extent they relate to the manufacture of Amino Resins at the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility;
25. The patents and patent applications set forth on Exhibit B to this Order;
26. The laboratory equipment at the Indian Orchard Manufacturing Facility set forth on Exhibit C to this Order;
27. Any assets transferred, retired, or disposed of during the Hold Separate period in the ordinary course of business;
28. Assets of any benefit plans allocable to the UCB Amino Resins Employees, to the extent the Acquirer does not assume liabilities associated with those plans prior to the Effective Date;
29. The UCBTM and Surface SpecialtiesTM marks and any derivatives thereof;
30. Any personnel records of UCB and Surface Specialties employees other than UCB Amino Resin Employees;

31. UCB's and Surface Specialties' corporate and regional headquarters;
32. Any management information systems (but not including Confidential Business Information that may reside on those systems), including hardware and software used by UCB or Surface Specialties prior to the Effective Date to provide services to UCB or Surface Specialties, that were not solely related to the UCB Amino Resins Business, including but not limited to all assets used by UCB and/or Surface Specialties to provide transition services to Cytec and to the UCB Amino Resins Business under the transition services agreement to be entered into between UCB and Cytec in connection with the Acquisition;
33. Assets of any UCB or Surface Specialties corporate service function that is not solely related to the UCB Amino Resins Business and all sales offices that are not solely related to the UCB Amino Resins Business;
34. Any and all cash and cash equivalents;
35. Any intangible asset that has not been used in the research, development, manufacture, marketing, distribution, or sale of Amino Resins in the two years preceding the date the Order is accepted by the Commission for public comment and that is Primarily Related to any of the following Surface Specialties Businesses: Radcure, alkyd, acrylic, urethane and epoxy coating resins, powder coating resins, adhesives, and additives (other than Fechenheim Additives and Modacure™);
36. Any tax returns of any Surface Specialties entity, Cytec or any affiliate of Cytec;
37. All insurance policies relating to the UCB Amino Resins Business and any right to proceeds thereunder;

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38. Any asset that Cyttec did not acquire as part of its acquisition of Surface Specialties.
- AA. “UCB Amino Resins Employees” means the people listed on Exhibit D to this Order, together with any other current full-time employees of Surface Specialties as of the Effective Date of Divestiture who, at any time within two years prior to the Effective Date of Divestiture of the UCB Amino Resins Business, were employed by the UCB Amino Resins Business or supported the UCB Amino Resins Business, excluding sales, distribution, technical service, customer service, legal, accounting, or other purely administrative support personnel.
- BB. “UCB Amino Resins Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of Amino Resins Products anywhere in the world, including pursuant to the LaSalle Toll Agreement, and includes all proprietary and public information relating to the specifications for each grade of Amino Resins Products, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed, or researched production by UCB of any grades of Amino Resin Products in the ordinary course of business.
- CC. “Suzano Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties in Suzano, Brazil.
- DD. “Werndorf Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB

and located at the industrial facility owned by Surface Specialties in Werndorf, Austria.

II.

IT IS FURTHER ORDERED that:

- A. Respondent shall, no later than one hundred and eighty (180) days from the date upon which this Order is accepted by the Commission for public comment, divest the UCB Amino Resins Business and the Fechenheim Additives Business, absolutely and in good faith and at no minimum price, to an Acquirer that receives the prior approval of the Commission, and in a manner that receives the prior approval of the Commission .
- B. At the option of the Acquirer (to be exercised no later than the time the Acquirer signs agreements with Respondent to effect the acquisition of the UCB Amino Resins Business) and subject to the approval of the Commission:
 - 1. Respondent shall enter into an agreement with the Acquirer requiring Respondent to sell and provide Acquirer with a supply of all, or any one or more, of the Amino Resin Products produced at one or more of the La Llagosta Amino Resins Facility, Suzano Amino Resins Facility, and Werndorf Amino Resins Facility at any time within five (5) years of the date this Order is accepted by the Commission for public comment. The agreement shall require Respondent to sell and provide the Acquirer with such Amino Resin Products for not longer than two (2) years at Respondent's Actual Costs. The agreement shall require Respondent to sell and provide the Acquirer with up to 110% of the greatest annual quantities of, and of comparable quality and specifications as, such Amino Resin Products sold by UCB or any predecessor to customers at any time within five (5) years of the date this Order is accepted by the Commission for public comment. The

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agreement shall provide that during the term of the agreement (and, for any particular item, for any longer period that may be required by law), Respondent may retain and have access to the books, records, or files included with the UCB Amino Resins Business to the extent reasonably necessary to comply with the terms of the agreement and this Order, and with any applicable legal obligations, insofar as those books, records, or files relate to the manufacture of Amino Resins at the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility, or the Suzano Amino Resins Facility. Access to such books, records, and files shall be limited to personnel who need access for purposes of such compliance and shall in no event include marketing, sales, or other commercial personnel.

2. Respondent shall enter into contracts, licenses, or other agreements with the Acquirer (“Supplemental Rights Agreement”) sufficient to permit the Acquirer to use, for a period of up to two years after the Effective Date of Divestiture, assets, located anywhere in the world, that are not included in the definition of the UCB Amino Resins Business, but that have been used by Surface Specialties in some way in the twelve (12) months preceding the date this Order is accepted for public comment, in the research, development, manufacture, marketing, or sale of Amino Resins Products.
3. Respondent shall enter into a transition services agreement with the Acquirer, with an initial term of six (6) months following the Effective Date of Divestiture that can, upon a showing satisfactory to the Commission, be extended for a period of up to six (6) months, to provide the services which make use of the laboratory equipment set forth on Exhibit C to the Order, consistent with past practice at Surface Specialties.
4. Respondent shall grant the Acquirer a sole, irrevocable, perpetual, royalty-free license (with no cross-license or

grant-back obligation), with respect to the patents and patent applications listed on Exhibit B, with rights to sub-license to customers for use in connection with products the customer purchases from the Acquirer.

5. Respondent shall enter into an agreement to supply to the Acquirer administrative, human resources, and accounting services for a period not longer than six (6) months following the Effective Date.
 6. Respondent shall enter into contracts, licenses, or other agreements with the Acquirer ("Equivalent Contract Rights Agreement"): (1) sufficient to permit the Acquirer to obtain the equivalent economic and competitive benefit of any rights or obligations of UCB's Amino Resins Business under any existing contract with Solutia that, for any reason, were not assigned, conveyed, or otherwise transferred to the Acquirer or (2) that are reasonably necessary to achieve the purposes of this Order.
 7. Respondent shall grant the Acquirer a non-exclusive, irrevocable, perpetual, royalty-free license (with no cross-license or grant-back obligations), for use in the field of Amino Resins, to all know-how, trade secrets, inventions, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas that are included in Paragraph I.AA.35 of this Order.
- C. The Divestiture Agreements shall provide that the Acquirer can assign its rights under them, in whole but not in part, in connection with a sale of all or substantially all of the UCB Amino Resins Business and the Fechenheim Additives Business.
- D. Respondent may, at its option, require the Acquirer to grant Respondent a perpetual, royalty-free license (with no cross-

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license or grant-back obligations), for use only in fields other than Amino Resins, to all know-how, trade secrets, inventions, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas that are included in the UCB Amino Resins Business pursuant to Paragraph I.AA.7 or I.AA.17 of this Order.

- E. Until the Effective Date of Divestiture of the UCB Amino Resins Business, Respondent shall take such actions as are necessary to maintain the viability and marketability of the UCB Amino Resins Business and to prevent the destruction, removal, wasting, deterioration, or impairment of the UCB Amino Resins Business, except for ordinary wear and tear. Respondent shall not be required to make capital expenditures other than those listed on the schedule attached as Exhibit E and those that are necessary expenditures during the Hold Separate period to maintain the viability and marketability of the UCB Amino Resins Business or to prevent the destruction, removal, wasting, deterioration, or impairment of the UCB Amino Resins Business, except for ordinary wear and tear.
- F. Subject to the approval of the Commission, Respondent shall enter into an agreement with the Acquirer that Respondent shall:
1. not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and
 2. not use any Confidential Business Information for any reason other than as required or permitted by this Order;
- provided, however*, that the agreement shall permit Respondent to use Confidential Business Information only:
- (i) for the purpose of performing or complying with Respondent's obligations under this Order, the Hold

Separate, or the Divestiture Agreements; or (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation or judicial order.

G. Respondent shall:

1. not later than thirty days before the Effective Date of Divestiture, provide an opportunity for the Acquirer: (i) to meet personally, and outside the presence or hearing of any employee or agent of Cytec or Surface Specialties, with any one or more of the UCB Amino Resins Employees; and (ii) to make offers of employment to any one or more of the UCB Amino Resins Employees;
2. (i) not directly or indirectly interfere with the Acquirer's offer of employment to any one or more of the UCB Amino Resins Employees, directly or indirectly attempt to persuade any one or more of the UCB Amino Resins Employees to decline any offer of employment from the Acquirer, or offer any incentive to any UCB Amino Resins Employees to decline employment with the Acquirer; (ii) irrevocably waive any legal or equitable right to deter any UCB Amino Resins Employees from accepting employment with the Acquirer, including, but not limited to, any noncompete or confidentiality provisions of employment or other contracts with UCB that directly or indirectly relate to the UCB Amino Resins Business or the employment of any one or more of the UCB Amino Resins Employees by the Acquirer; (iii) not interfere with the employment by the Acquirer of any UCB Amino Resins Employees; and (iv) continue employee benefits offered by UCB or Cytec until the Effective Date of Divestiture, including regularly scheduled or merit raises and bonuses, and regularly scheduled vesting of all pension benefits; and,

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3. not, for a period of one year from the Effective Date of Divestiture, directly or indirectly, solicit, negotiate, hire, or enter into any arrangement for the services of all or any of the UCB Amino Resins Employees, unless such employee's employment has been terminated by the Acquirer.
- H. Prior to the Effective Date of Divestiture, Respondent shall secure all consents and waivers from all private entities that are necessary for the divestiture of the UCB Amino Resins Business, and for the continued research, development, manufacture, and sale of Amino Resin Products by the Acquirer.
- I. Respondent shall comply with all terms of the Divestiture Agreements, and any breach by Respondent of any term of the Divestiture Agreements shall constitute a violation of this Order. If any term of the Divestiture Agreements varies from the terms of this Order ("Order Term"), then to the extent that Respondent cannot fully comply with both terms, the Order Term shall determine Respondent's obligations under this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Agreements, any failure to meet any condition precedent to closing (whether waived or not) or any modification of the Divestiture Agreements, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
- J. The purpose of the divestiture of the UCB Amino Resins Business and the Fechenheim Additives Business is to ensure the continuing, viable, and competitive operation of the UCB Amino Resins Business and the Fechenheim Additives Business in the same business and in the same manner in which the UCB Amino Resins Business and the Fechenheim Additives Business were engaged at the time of the announcement of the proposed Acquisition and to remedy the lessening of competition alleged in the Commission's complaint.

IT IS FURTHER ORDERED that:**K.** Respondent shall:

1. not provide, disclose, or otherwise make available any Confidential Business Information to any Person; and,
2. not use any Confidential Business Information for any reason or purpose other than as otherwise required or permitted by this Order.

L. Notwithstanding Paragraph III.A of this Order and subject to the Hold Separate, Respondent shall use Confidential Information only: (i) for the purpose of performing or complying with Respondent's obligations under this Order, the Hold Separate, or the Divestiture Agreements; or (ii) for the purpose of complying with Respondent's financial, tax reporting, health, safety, and environmental obligations or any other disclosure obligations imposed by law, regulation or judicial order.

III.**IT IS FURTHER ORDERED** that:

- A.** At any time after Respondent signs the Consent Agreement, the Commission may appoint a Person to serve as Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements made a part of this Order. The Monitor Trustee may be the same person as the Divestiture Trustee, or as the Hold Separate Trustee.
- B.** If the Commission appoints a Person to serve as Monitor Trustee pursuant to this Paragraph IV. of this Order, Respondent shall consent to the following terms and

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conditions regarding the powers, duties, authorities, and responsibilities of the Monitor Trustee:

1. The Commission shall select the Monitor Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) business days after notice from the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.
2. The Monitor Trustee shall have the power and authority to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor Trustee in a manner consistent with the purposes of this Order and in consultation with the Commission.
3. Within ten (10) days after appointment of the Monitor Trustee, Respondent shall execute an agreement ("Monitor Trustee Agreement") that, subject to the approval of the Commission, confers on the Monitor Trustee all the rights and powers necessary to permit the Monitor Trustee to monitor Respondent's compliance with the terms of this Order and the Divestiture Agreements in a manner consistent with the purposes of this Order. Respondent may require the Monitor Trustee to sign a confidentiality agreement prohibiting the use, or disclosure to anyone other than the Commission, of any competitively sensitive or proprietary information gained as a result of his or her role as Monitor Trustee.
4. The Monitor Trustee shall serve until the earlier of: (i) the expiration of this Order pursuant to Paragraph IX; or (ii) the

expiration of all the terms that comprise the Divestiture Agreements.

5. The Monitor Trustee shall have full and complete access to Respondent's books, records, documents, personnel, facilities, and technical information relating to compliance with this Order and the Divestiture Agreements, or to any other relevant information, as the Monitor Trustee may reasonably request. Respondent shall cooperate with any reasonable request of the Monitor Trustee. Respondent shall take no action to interfere with or impede the Monitor Trustee's ability to monitor Respondent's compliance with this Order and the Divestiture Agreements.
6. The Monitor Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The Monitor Trustee shall have authority to employ, at the expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor Trustee's duties and responsibilities. The Monitor Trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.
7. Respondent shall indemnify the Monitor Trustee and hold the Monitor Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor Trustee's duties (including the duties of the Monitor Trustee's employees), including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, willful or wanton acts, or bad faith by the Monitor Trustee.

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8. If at any time the Commission determines that the Monitor Trustee has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute to serve as Monitor Trustee in the same manner as provided in this Paragraph IV.
 9. The Commission may on its own initiative or at the request of the Monitor Trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order and the Divestiture Agreements.
 10. The Monitor Trustee shall report in writing to the Commission concerning Respondent's compliance with this Order and the Divestiture Agreements every ninety days for a period of two years from the date Respondent signs the Consent Agreement and annually thereafter on the anniversary of the date this Order is accepted by the Commission for public comment during the remainder of the Monitor Trustee's period of appointment, and at such other times as representatives of the Commission may request.
- C. Respondent shall comply with all terms of the Monitor Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Monitor Trustee Agreement, any modification of the Monitor Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

IV.**IT IS FURTHER ORDERED** that:

- A. If Respondent fails to complete the divestitures required by Paragraph II. of this Order within the time periods specified

therein, then the Commission may appoint a Divestiture Trustee to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer and to execute Divestiture Agreements that satisfy the requirements of Paragraph II of this Order. The Divestiture Trustee may be the same person as the Monitor Trustee or the Hold Separate Trustee, and shall have the authority and responsibility to divest the UCB Amino Resins Business and the Fechenheim Additives Business absolutely and in good faith, and with the Commission's prior approval.

- B. Neither the decision of the Commission to appoint a Divestiture Trustee, nor the decision of the Commission not to appoint a Divestiture Trustee, to divest any of the assets under this Paragraph V. shall preclude the Commission or the Attorney General from seeking civil penalties or any relief available to it, including a court-appointed trustee, pursuant to § 5(*I*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*I*), or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.
- C. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph V. of this Order to divest the UCB Amino Resins Business, Respondent shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. The Commission shall select the Divestiture Trustee, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice from the staff of the Commission to Respondent of the identity of any proposed Divestiture Trustee, Respondent shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

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2. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer that receives the prior approval of the Commission pursuant to the terms of this Order and to enter into Divestiture Agreements with the Acquirer pursuant to the terms of this Order, which Divestiture Agreements shall be subject to the prior approval of the Commission.
3. Within ten (10) days after appointment of the Divestiture Trustee, Respondent shall execute a (or amend the existing) trust agreement (“Divestiture Trustee Agreement”) that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to divest the UCB Amino Resins Business and the Fechenheim Additives Business to an Acquirer and to enter into Divestiture Agreements with the Acquirer.
4. The Divestiture Trustee shall have twelve (12) months from the date the Commission, or the court, in the case of a court-appointed trustee, approves the Divestiture Trustee Agreement described in this Paragraph V. of this Order to divest the UCB Amino Resins Business and the Fechenheim Additives Business and to enter into Divestiture Agreements with an Acquirer that satisfies the requirements of Paragraph II. of this Order. If, however, at the end of the applicable twelve-month period, the Divestiture Trustee has submitted to the Commission or the court a plan of divestiture or believes that divestiture can be achieved within a reasonable time, such divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend such divestiture period only two (2) times.

5. The Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of Respondent related to the research, development, manufacture, marketing, distribution, or sale of Amino Resin Products, or related to any other relevant information, as the Divestiture Trustee may request. Respondent shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondent shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of his or her responsibilities.
6. The Divestiture Trustee shall use reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondent's absolute and unconditional obligation to divest at no minimum price and the Divestiture Trustee's obligation to expeditiously accomplish the remedial purpose of this Order; to assure that Respondent enters into Divestiture Agreements that comply with the provisions of Paragraph II. of this Order; to assure that Respondent complies with the remaining provisions of this Order; and to assure that the Acquirer obtains the assets required to research, develop, manufacture, sell and distribute Amino Resin Products. The divestiture shall be made to, and the Divestiture Agreements executed with, an Acquirer in the manner set forth in Paragraph II. of this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one acquiring entity, the Divestiture Trustee shall divest to the acquiring entity or entities selected by Respondent from among those approved by the Commission, *provided further, however*, that Respondent shall select such entity within five (5) days of receiving notification of the Commission's approval.
7. The Divestiture Trustee shall serve, without bond or other security, at the expense of Respondent, on such reasonable

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and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the expense of Respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondent. The Divestiture Trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the Divestiture Trustee's locating an Acquirer and assuring compliance with this Order.

8. Respondent shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Divestiture Trustee.
9. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute trustee in the same manner as provided in this Paragraph V. of this Order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional

orders or directions as may be necessary or appropriate to comply with the terms of this Order.

11. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divested Assets.
 12. The Divestiture Trustee shall report in writing to Respondent and to the Commission every two (2) months concerning his or her efforts to divest the UCB Amino Resins Business and the Fechenheim Additives Business and Respondent's compliance with the terms of this Order.
- D. Respondent shall comply with all terms of the Divestiture Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Divestiture Trustee Agreement, any modification of the Divestiture Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that:

- A. Within thirty (30) days after the date this Order becomes final and every thirty (30) days thereafter until the Respondent has fully complied with the provisions of

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Paragraphs II. and V. of this Order, Respondent shall submit to the Commission (with simultaneous copies to the Monitor Trustee, the Hold Separate Trustee and the Divestiture Trustee(s), as appropriate) verified written reports setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II. and V. of this Order. Respondent shall include in the reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II.A., II.B. and II.C. of this Order, including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondent shall include in the reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning completing the obligations; and,

- B. One (1) year from the date this Order becomes final, annually for the next three (3) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file verified written reports with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

VII.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this Order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order; and

- B. Upon five (5) days' notice to Respondent and without restraint or interference from it, to interview officers, directors, employees, agents or independent contractors of Respondent.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 7, 2015.

Order to Hold Separate

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed acquisition by Respondent Cytec Industries Inc. (“Cytec”) of certain assets of UCB S.A. (“UCB”), and Respondent having been furnished thereafter with a copy of the draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and that, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

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

1. Respondent Cytec is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its office and principal place of business

located at Five Garret Mountain Plaza, West Paterson,
New Jersey 07424.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Hold Separate, the following definitions shall apply:

- A. “Cytec” means Cytec Industries Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its parents, joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Cytec, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “UCB” means UCB S.A., a corporation organized, existing, and doing business under and by virtue of the laws of Belgium, with its registered office located at 60 Allée de la Recherche, B-1070, Brussels, Belgium; and all joint ventures, subsidiaries, divisions, groups, and affiliates controlled by UCB, including without limitation Surface Specialties Inc. (formerly known as UCB Chemicals Corp.) and UCB, Inc.
- C. “Surface Specialties” means the Surface Specialties business of UCB which Cytec agreed to acquire as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- D. “Commission” means the Federal Trade Commission.
- E. “Respondent” means Cytec Industries Inc.
- F. “Acquirer” means each Person approved by the Commission to acquire the UCB Amino Resins Business pursuant to Paragraphs II or V of this Order.

Order to Hold Separate

- G. “Actual Cost” means actual direct material plus actual direct labor plus allocated actual manufacturing overhead at the Suzano Amino Resins Facility, the Werndorf Amino Resins Facility and the La Llagosta Amino Resins Facility.
- H. “Acquisition” means the proposed acquisition of Surface Specialties by Cytec, as described in the October 1, 2004, Stock and Asset Purchase Agreement between UCB S.A. and Cytec Industries Inc.
- I. “Amino Resins” means products obtained through the addition of formaldehyde to urea, melamine or benzoguanamine and such products etherified with linear or branched aliphatic alcohols (C1-C18 atoms). This definition excludes the products obtained through the addition of formaldehyde to phenols (the phenolics), the products obtained through the addition of formaldehyde to carbamates (such as HF480 and Alvnovol VPN 1759) and the products obtained through the reaction of butylated urea formaldehyde with alkyds (plasticized urea formaldehyde resins).
- J. “Amino Resin Products” means all of those grades and types of Amino Resins currently manufactured, marketed, or sold by UCB, all of those grades and types of Amino Resins currently being researched or developed by UCB, and all of those grades and types of Amino Resins that have been researched, developed, manufactured, marketed, or sold by UCB or any predecessor any time within five years of the date this Order is accepted by the Commission for public comment. “Amino Resin Products” does not include formulated or combination products consisting of an Amino Resin and one or more polymers, other than Modacure™ resins.
- K. “Divestiture Agreements” means any agreement that receives the prior approval of the Commission between Respondent and an Acquirer (or between a trustee appointed pursuant to Paragraph V of this Order and an Acquirer) related to the UCB Amino Resins Business required to be divested pursuant to Paragraphs II or V of this Order and the rights or assets to be licensed or

otherwise made available to the Acquirer pursuant to Paragraph II of this Order, including, but not limited to any agreement between the Respondent and the Acquirer required or permitted by or pursuant to Paragraph II.B. of this Order.

- L. “Indian Orchard Manufacturing Facility” means the industrial park owned and operated by Solutia, Inc. near Springfield, Massachusetts and the immediate vicinity.
- M. “Indian Orchard Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned, operated, leased, or otherwise within the custody or control by or on behalf of UCB and located at the Indian Orchard Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.
- N. “Fechenheim Manufacturing Facility” means the industrial park owned by AllessaChemie GmbH near Fechenheim, Germany and the immediate vicinity.
- O. “Fechenheim Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Amino Resin Products.
- P. “Fechenheim Additives” means the additives listed on Exhibit A to this Order, together with any improvements.
- Q. “Fechenheim Additives Business” means:
 - 1. the buildings, structures, fixtures, equipment, machinery, and other tangible property owned or operated by or on behalf of UCB and located at the Fechenheim Manufacturing Facility used for any purpose related to the research, development, manufacture, marketing, sale, and distribution of Fechenheim Additives;
 - 2. the books, records, and files (whether stored in electronic, magnetic, paper, or any other format) located at the Fechenheim Manufacturing Facility that are related

Order to Hold Separate

- to the research, development, manufacture, marketing, sale and distribution of the Fechenheim Additives;
3. all of UCB's rights in intellectual property that is used exclusively in the research, development, manufacture, marketing, sale and distribution of Fechenheim Additives;
 4. all of UCB's rights in any tolling agreement pursuant to which AllessaChemie GmbH produces Fechenheim Additives; and
 5. a perpetual, non-exclusive, royalty-free license, limited to the field of Fechenheim Additives, to all of UCB's other intellectual property, as of the date this Order is accepted by the Commission for public comment, used in the research, development, manufacture, marketing, sale and distribution of Fechenheim Additives, with a right to sub-license customers for use in connection with products the customer purchases from the Acquirer.
- R. "LaSalle Toll Agreement" means the January 31, 2003, agreement between UCB Chemicals Corp. and UCB, Inc. and Solutia Canada Inc. relating to the toll manufacture of Amino Resin Products for UCB at Solutia Canada Inc.'s manufacturing site in LaSalle, Quebec.
- S. "Divestiture Trustee" means the divestiture trustee(s) appointed pursuant to Paragraph V. of this Order.
- T. "Effective Date of Divestiture" means the date on which the divestiture of the UCB Amino Resins Business to the Acquirer is consummated.
- U. "La Llagosta Amino Resins Facility" means the buildings, structures, fixtures, equipment, machinery and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties at La Llagosta, Spain.
- V. "Confidential Business Information" means any information relating to the UCB Amino Resins Business or the Fechenheim Additives Business (but excluding the assets that are described in Paragraph I.Q.5 in the definition of that business) (before or after the divestiture required by Paragraph II of this Order) that is not in the

public domain, including, but not limited to:

1. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any customers anywhere in the world at any time within five (5) years of the date this Order is accepted by the Commission for public comment; and,
2. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format) relating to the research, development, manufacture, marketing or sale of Amino Resins anywhere in the world.

Confidential Business Information shall not include: (i) information that subsequently falls within the public domain through no violation of this Order by Respondent or breach of a confidentiality or non-disclosure agreement with respect to such information; (ii) information in the Respondent's possession as of the date hereof that was not obtained from UCB pursuant to the Confidentiality Agreement dated February 20, 2004, between Cytec and UCB; (iii) information independently developed by Respondent without reference to or use of information that Respondent obtained from the UCB Amino Resins Business after February 20, 2004; (iv) information that is required by law to be disclosed; (v) information that may be contained in documents or databases that also contain Confidential Business Information but does not relate to the UCB Amino Resins Business or (vi) information relating to the Fechenheim Additives Business that is currently used in UCB's additives business outside Fechenheim.

W. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or

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governmental entity.

- X. “Primarily Related,” when used to determine the appropriate allocation of an intangible asset between the UCB Amino Resins Business and the other Surface Specialties businesses listed in Paragraph I.AA.35, means:
1. For an asset that has commercial application, that more than fifty percent (50%) of the revenue derived from sales of products that make use of the asset were in calendar year 2004 attributable to products sold by the other Surface Specialties businesses; and,
 2. For an asset that does not have commercial application as of the date this Order is accepted by the Commission for public comment, that the primary inventor of the asset was employed by one or more of those other Surface Specialties businesses.
- Y. “UCB Amino Resins Business” means all assets of the UCB Surface Specialties Business anywhere in the world relating to the research, development, marketing, sale, and production of Amino Resin Products, including, but not limited to:
1. the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility;
 2. an assignment of all of UCB’s rights and obligations to the LaSalle Toll Agreement;
 3. an assignment of all of UCB’s rights and obligations to all contracts with Solutia that relate solely to the research, development, marketing, sale, and production of Amino Resin Products;
 4. with respect to any contracts with Solutia that relate to the research, development, marketing, sale and production of both Amino Resin Products and other products, an assignment or other transfer (in a manner approved by the Commission) of all of UCB’s rights and obligations under such contracts that relate to the research, development, marketing, sale, and production of Amino Resin Products;
 5. all real property (together with appurtenances, licenses and permits) used for any purpose related to the research,

- development, manufacture, marketing, sale, and distribution of Amino Resins;
6. all patents, patent applications, copyrights, trademarks, trade names, owned by UCB, or that UCB has acquired any rights to use, that are related to the research, development, manufacture, marketing, sale or use of Amino Resins;
 7. all know-how, trade secrets, ongoing research and development, research materials, technical information, data of any kind (whether stored in electronic, magnetic, paper, or any other format), management information systems, information contained in management information systems, software, inventions, quality control data, test data, technological know-how, licenses, assignments, registrations, submissions, approvals, technology, specifications, designs, drawings, processes, recipes, protocols, and formulas, and all other intellectual property rights or confidential business information (in whatever form or medium), relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
 8. all contracts relating to the research, manufacture, marketing, or sale, and use of Amino Resins entered into with customers (together with associated bid and performance bonds), suppliers, sales representatives, distributors, agents, employees, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees, and joint venture partners;
 9. all governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Indian Orchard Amino Resins Facility or the Fechenheim Amino Resins Facility;
 10. all warranties and guarantees, express or implied, relating to any tangible or intangible asset, including the Indian Orchard Amino Resins Facility and the Fechenheim Amino Resins Facility, related to the research, development, manufacture, marketing, or sale, and use of Amino Resins;

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11. all customer lists, vendor lists, catalogs, sales promotion literature, and advertising materials relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
12. all contracts, sales call reports, customer purchase orders, customer product specifications and requirements, records of historical customer purchases, customer correspondence, customer information, information relating to customer qualification of Amino Resin Products, invoices, payment records, customer records, and customer files (whether stored in electronic, magnetic, paper, or any other format) relating to the UCB Amino Resins Business, or the sale of Amino Resins to any customers anywhere in the world at any time in the last 5 years;
13. all books, records, and files (whether stored in electronic, magnetic, paper, or any other format) relating to Amino Resins Products, together with access to any records Respondent retains to the extent necessary to permit the Acquirer to comply with applicable law or to defend itself against claims made on the basis of any liability it assumes in connection with its acquisition of the UCB Amino Resins Business and the Fechenheim Additives Business;
14. all plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, transportation and storage facilities, and supplies relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
15. all rights in and to inventories of products, raw materials, supplies and parts, including work-in-process and finished goods relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins;
16. all items of prepaid expense relating to the research, development, manufacture, marketing, or sale, and use of Amino Resins; and

17. any other tangible or intangible assets relating to the research and development, manufacture, marketing, distribution or sale of Amino Resins that are reasonably necessary, in the sole discretion of the Commission, to operate the UCB Amino Resins business in a scope and manner to achieve the purposes of this Order or sufficient to remedy the harm to competition alleged in the Complaint.

Provided, however, that the UCB Amino Resins Business does not include any of the following:

18. the Werndorf Amino Resins Facility;
19. the La Llagosta Amino Resins Facility;
20. the Suzano Amino Resins Facility;
21. any assets used exclusively for the five (5) years prior to the date this Order is accepted by the Commission for public comment for the research, development, manufacture, marketing, or sale of products other than Amino Resin Products;
22. any assets described in paragraphs I.AA.5, 10, 14 or 16 at or relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility or the Suzano Amino Resins Facility;
23. All governmental approvals, consents, licenses, permits, waivers, or other authorizations relating to the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility or the Suzano Amino Resins Facility;
24. Any rights in or to inventories of products, raw materials, supplies or parts, including work-in-process, but not including finished goods, to the extent they relate to the manufacture of Amino Resins at the Werndorf Amino Resins Facility, the La Llagosta Amino Resins Facility or the Suzano Amino Resins Facility;
25. The patents and patent applications set forth on Exhibit B to this Order;

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26. The laboratory equipment at the Indian Orchard Manufacturing Facility set forth on Exhibit C to this Order;
27. Any assets transferred, retired or disposed of during the Hold Separate period in the ordinary course of business;
28. Assets of any benefit plans allocable to the UCB Amino Resins Employees, to the extent the Acquirer does not assume liabilities associated with those plans prior to the Effective Date;
29. The UCBTM and Surface SpecialtiesTM marks and any derivatives thereof;
30. Any personnel records of UCB and Surface Specialties employees other than UCB Amino Resin Employees;
31. UCB's and Surface Specialties' corporate and regional headquarters;
32. Any management information systems (but not including Confidential Business Information that may reside on those systems), including hardware and software used by UCB or Surface Specialties prior to the Effective Date to provide services to UCB or Surface Specialties, that were not solely related to the UCB Amino Resins Business, including but not limited to all assets used by UCB and/or Surface Specialties to provide transition services to Cytec and to the UCB Amino Resins Business under the transition services agreement to be entered into between UCB and Cytec in connection with the Acquisition;
33. Assets of any UCB or Surface Specialties corporate service function that is not solely related to the UCB Amino Resins Business and all sales offices that are not solely related to the UCB Amino Resins Business;
34. Any and all cash and cash equivalents;
35. Any intangible asset that has not been used in the research and development, manufacture, marketing,

distribution or sale of Amino Resins in the two years preceding the date the Order is accepted by the Commission for public comment and that is Primarily Related to any of the following Surface Specialties Businesses: Radcure, alkyd, acrylic, urethane and epoxy coating resins, powder coating resins, adhesives, and additives (other than Fechenheim Additives and Modacure™);

- 36. Any tax returns of any Surface Specialties entity, Cytec or any affiliate of Cytec;
 - 37. All insurance policies relating to the UCB Amino Resins Business and any right to proceeds thereunder;
 - 38. Any asset that Cytec did not acquire as part of its acquisition of Surface Specialties.
- Z. “UCB Amino Resins Employees” means the people listed on Exhibit D to this Order, together with any other current full-time employees of Surface Specialties as of the Effective Date of Divestiture who, at any time within two years prior to the Effective Date of Divestiture of the UCB Amino Resins Business, were employed by the UCB Amino Resins Business or supported the UCB Amino Resins Business, excluding sales, distribution, technical service, customer service, legal, accounting or other purely administrative support personnel.
- AA. “UCB Amino Resins Production Information” means all information relating to the past, present, planned, developed, or researched production of each grade of Amino Resins Products anywhere in the world, including pursuant to the LaSalle Toll Agreement, and includes all proprietary and public information relating to the specifications for each grade of Amino Resins Products, the raw material formulations, the operating conditions, the finishing process, the equipment cleaning procedures, plant maintenance information, the specifications for the manufacturing equipment, and any other information which relates to past, present, planned, developed, or researched production by UCB of any grades of Amino Resin Products in the ordinary course of business.

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- BB. “Suzano Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties in Suzano, Brazil.
- CC. “Werndorf Amino Resins Facility” means buildings, structures, fixtures, equipment, machinery and other tangible property owned or operated by or on behalf of UCB and located at the industrial facility owned by Surface Specialties in Werndorf, Austria.
- DD. “Decision and Order” means:
1. until the issuance of a final Decision and Order by the Commission, the proposed Decision and Order incorporated into and made a part of the Consent Agreement; or,
 2. following the issuance of a final Decision and Order by the Commission, the Decision and Order issued by the Commission.
- EE. “Divestiture Trustee” means the divestiture trustee(s) appointed pursuant to Paragraph V. of the Decision and Order.
- FF. “Held Separate Business” means the UCB Amino Resins Business.
- GG. “Hold Separate Order” means the Order to Hold Separate and Maintain Assets incorporated into and made a part of the Agreement Containing Consent Orders.
- HH. “Hold Separate Period” means the time period during which the Hold Separate is in effect, which shall begin on the date that the Acquisition is consummated and terminated pursuant to Paragraph VII. hereof.
- II. “Hold Separate Trustee” means the trustee appointed pursuant to Paragraph II of this Hold Separate Order.
- JJ. “Monitor Trustee” means the trustee appointed pursuant to Paragraph IV. of the Decision and Order.

II.

IT IS FURTHER ORDERED THAT:

- A. During the Hold Separate Period, Respondent shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate Order and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Respondent shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Respondent must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business's compliance with policies and standards concerning the safety, health, and environmental aspects of its operations and the integrity of its financial controls; and Respondent shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.
- B. Until the Effective Date of Divestiture, Respondent shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Business to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear.
- C. The purposes of this Hold Separate Order are to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Respondent until the divestiture required by the Decision and Order is achieved; (2) assure that no Confidential Business Information is exchanged between Respondent and the Held Separate Business, except in accordance with the provisions of this Hold Separate Order; (3) prevent interim harm to competition pending the relevant divestitures and

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other relief; and (4) help remedy any anticompetitive effects of the proposed Acquisition.

- D. Respondent shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. Richard M. Klein shall serve as Hold Separate Trustee.
 2. Within five (5) days of the date this Hold Separate Order becomes final, Respondent shall execute an agreement with the Hold Separate Trustee (“Trustee Agreement”) that, subject to the approval of the Commission, confers at least the following rights and obligations upon the Respondent and the Hold Separate Trustee:
 - a. The Trustee Agreement shall require that, no later than one (1) day after the Acquisition Date, Respondent transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
 - b. No later than one (1) day after the Acquisition Date, Respondent shall, pursuant to the Trustee Agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate Order and consistent with the purposes of the Decision and Order.
 - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate Order and the Decision and Order, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Respondent’s compliance with its obligations pursuant to this Hold Separate Order and the Decision and Order.

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- d. The Hold Separate Trustee shall have full and complete access to all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request including, but not limited to, all documents and records kept by Respondent in the ordinary course of business that relate to the Held Separate Business. Respondent shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Respondent shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Respondent's compliance with this Hold Separate Order and the Consent Agreement or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.
- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The Commission may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Respondent may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Confidential Business Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the Commission.
- h. Thirty (30) days after the Hold Separate Order becomes final, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Trustee shall report in writing to the Commission concerning the efforts to accomplish the

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purposes of this Hold Separate Order. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.

- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Respondent, which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the Commission to Respondent of the identity of any substitute Hold Separate Trustee, Respondent shall be deemed to have consented to the selection of the proposed substitute trustee. Respondent and the substitute Hold Separate Trustee shall execute a Trustee Agreement, subject to the approval of the Commission, consistent with this paragraph.
3. Respondent shall comply with all terms of the Trustee Agreement, and any breach by Respondent of any term of the Trustee Agreement shall constitute a violation of this Order. Notwithstanding any paragraph, section, or other provision of the Trustee Agreement, any modification of the Trustee Agreement, without the prior approval of the Commission, shall constitute a failure to comply with this Order.
4. No later than one (1) day after the Acquisition Date, Respondent shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business, to Steven Zollmann ("Manager").

- a. In the event that Steven Zollmann ceases to act as Manager, then Respondent shall select a substitute Manager, subject to the approval of the Commission, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate Order.
- b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Respondent. The Manager shall not be involved, in any way, in the operations of the other businesses of Respondent during the term of this Hold Separate Order.
- c. The Manager shall have no financial interests affected by Respondent's revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate Order.
- d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the Commission staff.
- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove UCB Amino Resins Employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Manager, in consultation with the Hold Separate Trustee, may request Respondent to, and Respondent shall, appoint a substitute person, which person the

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Manager shall have the right to approve.

- f. In addition to those UCB Amino Resins Employees within the Held Separate Business, the Manager may employ such Persons as are reasonably necessary to assist the Manager in managing the Held Separate Business.
 - g. The Hold Separate Trustee shall be permitted, in consultation with the Commission staff, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Respondent shall appoint a replacement Manager, subject to the approval of the Commission, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate Order.
5. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. To the extent that any UCB Amino Resins Employees leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
6. In connection with support services or products not included within the Held Separate Business, Respondent shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business interest by Respondent or UCB as of the date the Consent Agreement is signed by Respondent. For any services or products that Respondent and UCB may provide to the Held Separate Business, Respondent may charge no more than the same price they charge others (or subsidiaries, divisions, affiliates, or units of Respondent or UCB) for the same services or products. Respondent's personnel providing such services or products must retain and maintain all Confidential Business Information of the Held Separate

Business on a confidential basis, and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Respondent's or UCB's businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Confidential Business Information of the Held Separate Business.

- a. Respondent shall offer to the Held Separate Business any services and products that Respondent or UCB provided to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2003. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Respondent. The services and products that Respondent shall offer the Held Separate Business shall include, but shall not be limited to, the following:
 - (1) Human resources administrative services, including but not limited to payroll processing, labor relations support, pension administration, and health benefits;
 - (2) Environmental health and safety services, which are used to develop corporate policies and insure compliance with federal and state regulations and corporate policies;
 - (3) Preparation of tax returns;
 - (4) Audit services;

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- (5) Information systems, which constructs, maintains, and supports all computer systems;
 - (6) Processing of accounts payable;
 - (7) Technical support;
 - (8) Finance and financial accounting services;
 - (9) Procurement of supplies;
 - (10) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business; and
 - (11) Legal services;
- b. the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Respondent or UCB.
7. In addition to any other support services or products required by this Hold Separate Order, Respondent shall sell and provide to the Held Separate Business during the term of the Hold Separate Order a supply of all, or any one or more, of the Amino Resins Products that complies with the requirements of Paragraph II.B.1. of the Decision and Order.
8. Respondent shall cause the Hold Separate Trustee, the Manager, and each UCB Amino Resins Employee having access to Confidential Business Information to submit to the Commission a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate Order. These individuals must retain and maintain all Confidential

Business Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate Order, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Respondent's businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sale, marketing, or financial operations of the competing products of Respondent.

9. No later than five (5) days after the Acquisition Date, Respondent shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and independence of the Held Separate Business consistent with the provisions of this Hold Separate Order.
10. No later than five (5) days after the date this Hold Separate Order becomes final, Respondent shall circulate to employees of the Held Separate Business and to Respondent's employees who are responsible for the development, manufacture and sale of Amino Resins Products, a notice of this Hold Separate Order and the Consent Agreement.
11. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Respondent, on reasonable and customary terms commensurate with the person's experience and responsibilities.
12. Respondent shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager's

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duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee or the Manager.

13. Respondent shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business as it is currently operated;
 - b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
 - c. to carry on existing and planned capital projects (including, but not limited to, those projects related to any services or products provided under contracts with Solutia) and business plans; and
 - d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.

Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *PROVIDED, HOWEVER*, that, consistent with the purposes of the Decision and Order, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.

14. Respondent shall not, during the Hold Separate Period, offer UCB Amino Resins Employees positions with Respondent. The Acquirer shall have the option of offering employment to any UCB Amino Resins Employees. Respondent shall not interfere with the employment, by the Acquirer of such employees; shall not offer any incentive to such employees to decline employment with the Acquirer or to accept other employment with the Respondent; and shall remove any impediments that may deter such employees from accepting employment with the Acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the Acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Respondent.
15. For a period of two (2) years commencing on the Effective Date of Divestiture, Respondent shall not employ or make offers of employment to UCB Amino Resins Employees who have accepted offers of employment with the Acquirer unless the individual's employment has been terminated by the Acquirer.
16. Except for the Manager, UCB Amino Resins Employees, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Respondent shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.

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17. Respondent shall assure that UCB Amino Resins Employees receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
18. Respondent's employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to this Hold Separate Order) shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Held Separate Business not in the public domain except:
 - a. as required by law;
 - b. to the extent that necessary information is exchanged in the course of consummating the Acquisition;
 - c. in negotiating agreements to divest assets pursuant to the Consent Agreement and engaging in related due diligence;
 - d. in complying with this Hold Separate Order or the Consent Agreement;
 - e. in overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business's financial controls;
 - f. in defending legal claims, investigations or enforcement actions threatened or brought against or related to the Held Separate Business; or
 - g. in obtaining legal advice.

Nor shall the Manager or UCB Amino Resins Employees receive or have access to, or use or continue to use, any Confidential Business Information not in the public domain about Respondent and relating to Respondent's businesses, except such information as is necessary to maintain and operate the Held Separate Business. Respondent may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Respondent to comply with the requirements and obligations of the laws of the United States and other countries, and to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.

19. Respondent and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system, as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Respondent, to audit Respondent's networks and systems to verify compliance with this Hold Separate Order.

III.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed (1) dissolution of the Respondent, (2) acquisition, merger or consolidation of Respondent, or (3) any other change in the Respondent that may affect compliance obligations arising out of

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this Hold Separate Order, including but not limited to assignment and the creation or dissolution of subsidiaries.

IV.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondent made to their principal United States offices, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Respondent relating to any matters contained in this Hold Separate Order; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding any such matters.

V.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

- A. three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or
- B. the day after the Effective Date of Divestiture required by the Consent Agreement.

By the Commission.

Analysis of Proposed Consent to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) from Cytec Industries Inc. (“Cytec”). The Consent Agreement is intended to resolve anticompetitive effects stemming from Cytec’s proposed acquisition of the Surface Specialties Business of UCB S.A. (“UCB”). The Consent Agreement includes a proposed Decision and Order (“Order”) that would require Cytec to divest UCB assets relating to the research, development, marketing, sale, and production of amino resins (“UCB Amino Resins Business”). The Consent Agreement also includes an Order to Hold Separate and Maintain Assets, which requires Cytec to preserve the UCB Amino Resins Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Consent Agreement, if finally accepted by the Commission, would settle charges that Cytec’s proposed acquisition of UCB’s Surface Specialties Business may have substantially lessened competition in the markets for amino resins for: (1) industrial liquid coatings; and (2) adhesion promotion in rubber. The Commission has reason to believe that Cytec’s proposed acquisition of UCB’s Surface Specialties Business would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement’s proposed Order and Order to Hold Separate and Maintain Assets.

Analysis

I. Amino Resins for Industrial Liquid Coatings and Adhesion Promotion in Rubber

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of Cytec's proposed acquisition of UCB's Surface Specialties Business are the manufacture and sale of amino resins for: (1) industrial liquid coatings; and (2) adhesion promotion in rubber. The types of amino resins that Cytec and UCB manufacture are used as cross-linking agents in thermoset surface coatings for a variety of applications, including automotive coatings, coil coatings, can coatings, appliance coatings, and general maintenance coatings. These types of resins are also used, primarily in tires, to promote the adhesion of rubber to materials such as steel or fiber. As the proposed complaint describes, there are no effective substitutes for amino resins in the applications in which they are used. The proposed complaint also alleges that the relevant geographic market in which to assess the impact of the proposed acquisition is no broader than North America and is potentially limited to the United States.

The proposed complaint alleges that the markets for amino resins for industrial liquid coatings and adhesion promotion in rubber are highly concentrated, that Cytec and UCB have been for many years the two major competitors in these markets, and that these companies compete with one another across a wide range of amino resin grades and applications in which customers have qualified their resins for use. As the proposed complaint describes, customers have relied on the competition between these companies to maintain competitive amino resin prices. The proposed complaint alleges that the proposed acquisition of UCB's Surface Specialties division by Cytec would reduce competition by eliminating the direct competition that has existed between these two companies. The proposed complaint further alleges that entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Other firms would not in the foreseeable future be able to offer the range of grades that Cytec and UCB

have developed over the years, nor would they be able to meet the requirements necessary to commercially qualify their resins for use in demanding customer applications.

II. The Consent Agreement

The proposed Order requires that Cytec divest the UCB Amino Resins Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which the Commission accepts the proposed Order for public comment. The divested business includes two manufacturing facilities, in Massachusetts and in Germany, where UCB manufactures amino resins, together with UCB's rights to obtain amino resins pursuant to a tolling agreement between UCB and Solutia Canada, Inc. The divested business also includes certain lines of additives that are the only other products that UCB manufactures at the plant in Germany. In connection with the divestiture, Cytec is required to divest to an acquirer the set of assets that comprise UCB's amino resins business. In addition to the manufacturing assets, for example, Cytec is required to divest the patents and other intellectual property that UCB has relied upon in its amino resins business, the sales and marketing materials, including customer information, that UCB has relied upon, and the other books and records of the business. Further, Cytec is required to assign the different contracts relating to the amino resins business, and to secure all consents necessary for the divestiture. Cytec is also required, until the divestiture is completed, to take the steps necessary to maintain the viability of the UCB Amino Resins Business. The acquirer of the divested assets would have the opportunity, without interference from Cytec, to interview and potentially hire key UCB personnel who have been involved in supporting all aspects of the company's amino resins business.

The proposed Order also provides that if Cytec does not complete its divestiture within the specified six-month period, the Commission may appoint a Divestiture Trustee to divest the UCB Amino Resins Business in a manner acceptable to the

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Commission. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Cytec's compliance with the terms of the proposed Order and the divestiture agreements that Cytec enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that is also included in the Consent Agreement requires that Cytec hold separate and maintain the viability and marketability of UCB's Amino Resins Business as a viable and competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Cytec and the UCB Amino Resins Business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the relevant markets pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Cytec's compliance with the Order to Hold Separate and Maintain Assets.

The proposed Order requires Cytec to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which Cytec intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Cytec to provide the Commission with a report of compliance with the Order every thirty (30) days after the date when the Order becomes final until the divestiture has been completed.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets, or in any way to modify the terms of the Consent Agreement, the

proposed Order, or the Order to Hold Separate and Maintain Assets.

Complaint

IN THE MATTER OF

NATIONWIDE MORTGAGE GROUP, INC., ET AL.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS OF
THE SAFEGUARDS RULE AND THE PRIVACY RULE*Docket 9319; File No. 0423104**Complaint, November 9, 2004--Decision, April 12, 2005*

This consent order, among other things, prohibits the respondent, a Florida-based corporation, from violating the GLB Safeguards Rule and the GLB Financial Privacy Rule, and requires the respondent, for ten years, to secure biennial assessments and reports to ensure that its information security program complies with the Safeguards Rule and is sufficiently effective to provide reasonable assurance that the security, confidentiality, and integrity of customer information is protected.

Participants

For the Commission: *Susan E. McDonald, Kathryn Ratte, Alain Sheer, Jessica L. Rich, Joel Winston, and Louis Silversin.*

For the Respondents: *F. Douglas Ross, Odin, Feldman & Pittleman.*

COMPLAINT

The Federal Trade Commission (“Commission”), having reason to believe that Nationwide Mortgage Group, Inc. and John D. Eubank, individually and as President and owner of Nationwide Mortgage Group, Inc. (“respondents”), have violated the provisions of the Commission’s Standards for Safeguarding Customer Information Rule (“Safeguards Rule”), 16 C.F.R. Part 314, and the Commission’s Privacy of Consumer Financial Information Rule (“Privacy Rule”), 16 C.F.R. Part 313, each issued pursuant to Title V of the Gramm-Leach-Bliley Act (“GLB Act”), 15 U.S.C. § 6801 *et seq.*, and it appearing to the Commission that this proceeding is in the public interest, alleges: