PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of **LAFARGE S.A.,** a corporation, **BLUE CIRCLE INDUSTRIES PLC,** a corporation, **BLUE CIRCLE NORTH AMERICA INC.,** a corporation, and **BLUE CIRCLE INC.,** a corporation.	Docket No. C - 4014 File No. 001 - 0112

PETITION OF LAFARGE S.A.
FOR APPROVAL OF PROPOSED DIVESTITURE

Pursuant to Section 2.41(f) of the Federal Trade Commission ("Commission") Rules of Practice and Procedure, 16 C.F.R. § 2.41 (2001), and paragraph IV.C of the Decision and Order in the above-captioned matter (the "Decision and Order"), Lafarge S.A. ("Lafarge"), Blue Circle Industries plc, Blue Circle North America Inc. and Blue Circle Inc. (collectively "Blue Circle" and together with Lafarge, the "Parties") hereby petition the Commission to approve the divestiture of Blue Circle's Lime Assets to Peak Investments L.L.C. ("Peak").[1]

At the outset, it bears noting that Lafarge does not operate a lime business in the United States. Lafarge's only interest in any U.S. lime business is through the ownership of a minority shareholding in Carmeuse North America.

[1] All capitalized terms not defined in this application have the meanings given to them in the Commission's Decision and Order.

I. Consent Agreement and Complaint

On May 30, 2001, Lafarge, Blue Circle and the Commission entered into an Agreement Containing Consent Orders that includes a Decision and Order, and an Order to Hold Separate and Maintain Assets (collectively, the "Consent Agreement"). The Consent Agreement, together with the Commission's Complaint, was placed in the public record on June 18, 2001, and subsequently made final by the Commission. On July 11, 2001, Lafarge completed its acquisition of Blue Circle. Currently, Lafarge Building Materials Inc. ("LBM") (the successor to Blue Circle Inc.) owns the Lime Assets and operates them in accordance with the Order to Hold Separate and Maintain Assets.

Count III of the Commission's Complaint alleges that the acquisition by Lafarge of Blue Circle will substantially increase concentration in the manufacture, marketing and sale of lime in the Southeast region of the United States and, as a result, may substantially lessen competition in the market for lime in the Southeast region.[2] Accordingly, paragraph IV.C of the Decision and Order requires the Parties to divest Blue Circle's Lime Assets no later than 180 days from the date upon which Lafarge consummates its acquisition of Blue Circle.

This application describes the principal terms of the agreements by which the Parties will divest the Lime Assets and explains how the divestiture of the Lime Assets to Peak satisfies the purposes of the Decision and Order.

II. The Transaction Documents

On September 27, 2001, LBM and Peak entered into (i) an Asset Purchase Agreement providing for the sale of the Lime Assets to Peak, (ii) a Lime Rock Supply Agreement providing for the sale of lime rock to Peak, and (iii) a Site Services Agreement for

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[2] The Commission's Complaint defines the Southeast region as Alabama, Georgia and Florida.

the provision of certain services by LBM and Peak to each other at the site where the Lime Plant is located (the "Calera Site").[3] (The Asset Purchase Agreement, the Lime Rock Supply Agreement and the Site Services Agreement are referred to collectively as the "Transaction Documents" and are attached hereto as Confidential Appendix A.)

Lafarge requests that all of the Transaction Documents and other information provided in Confidential Appendices A through C be treated by the Commission as strictly confidential and not be made available to the public. Confidential Appendices A through C contain commercially and competitively sensitive information relating to the divestiture of the Lime Assets. Disclosure of the information contained in these Confidential Appendices to the public will prejudice Lafarge and Peak, and negatively affect Lafarge's ability to comply with the Consent Order. Lafarge requests that the Commission inform it immediately if the Commission will not treat the confidential version of this application and the accompanying documents and information of Lafarge and Peak as confidential so that Lafarge may seek appropriate relief.[4]

As explained below, the terms of the Transaction Documents comply with and satisfy the purposes of the Decision and Order.

A. Asset Purchase Agreement

Pursuant to the Asset Purchase Agreement, Peak will acquire all assets necessary to operate Blue Circle's lime business, including, but not limited to: (i) the Lime Plant located at 8039 Highway 25, Calera, Alabama; (ii) real property; (iii) personal property; (iv) intellectual

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3 LBM also operates a cement plant and quarry at the Calera Site, neither of which are required to be divested under the Decision and Order.

4 For the convenience of maintaining the public record, the Parties are submitting this application in two versions – one that includes confidential and proprietary information (the "Confidential Version") and another that is the same as the Confidential Version, but with Confidential Appendices A through C redacted (the "Public Version").

property; (v) contract rights with third parties; (vi) government approvals and permits; (vii) rights under express or implied warranties from suppliers; (viii) books and records; (ix) plant facilities, machinery, equipment, furniture, fixtures, tools, vehicles, and transportation and storage facilities; (x) product inventory, raw materials, and supplies and parts, including work-in-process and finished product; (xi) customer and vendor lists, catalogs, sales promotion literature and advertising materials; and (xii) certain accounts receivable and certain accounts payable. Further, under the Asset Purchase Agreement, Peak will also be granted numerous easements burdening the portion of the Calera Site not being conveyed to Peak (which easements will permit Peak to continue to access and operate the Lime Assets in the manner in which they are currently accessed and operated). Pursuant to paragraph IV.B of the Decision and Order, Peak will also assume the Lime Off-Take Agreement, which was reviewed by Commission staff prior to the signing of the Consent Agreement.

In addition, pursuant to paragraph IV.F of the Decision and Order, Peak will hire experienced management personnel, other salaried employees and union employees to operate the Lime Assets. An explanation of the employee-related provisions in the Asset Purchase Agreement is provided in Confidential Appendix B hereto.

B. Site Services Agreement

Pursuant to paragraph I.SS of the Decision and Order, LBM and Peak have entered into a Site Services Agreement by which LBM will provide Peak certain services at the Calera Site (and pursuant to which Peak will provide certain services to LBM at the Calera Site). Among the services to be provided by LBM are supply of industrial water, coal, fuel, electricity, natural gas, telephone lines, computer networking lines, bagging and loading services, sewage and industrial waste water removal services, and rail services. Several of these services, such as coal, fuel, natural gas and electricity, are provided by third parties to the Calera Site and, under the Site Services Agreement, will be provided by LBM to Peak on a cost pass-through basis. The pricing and other terms that govern the provision of these and other services by LBM to Peak will allow Peak to continue operating the Lime Plant as a successful stand-alone business.

The Site Services Agreement also provides that LBM will, at its expense, construct new building facilities (*e.g.*, control room, administrative building and laboratory) for Peak in order to separate the essential operations of the Lime Plant from the other facilities at the Calera Site.

C. Lime Rock Supply Agreement

Pursuant to paragraph I.RR of the Decision and Order, LBM and Peak have entered into a Lime Rock Supply Agreement by which LBM will supply lime rock to Peak. The terms of the Lime Rock Supply Agreement ensure that Peak will have access to a reliable, long-term, low-cost supply of lime rock. The price structure of the Lime Rock Supply Agreement will enable Peak to establish itself as a strong, cost-competitive supplier of lime in the Southeast region. Confidential information about the terms and conditions of the Lime Rock Supply Agreement is provided in Confidential Appendix C.

III. The Proposed Acquirer

Peak is a limited liability company organized under the laws of Massachusetts, engaged in the acquisition and management of various companies, generally in the minerals/chemicals and aircraft services businesses. Over the past twelve years, the principals of Peak have acquired and managed companies with combined sales of over $1 billion, including the third largest salt company in the world, the second largest boron company, the second largest sulfate of potash company and one of the five natural soda ash producers. The headquarters address of Peak is:

Peak Investments, L.L.C.
15700 College Boulevard, Suite 101
Lenexa, Kansas 66219

The officers and directors of Peak are Michael R. Boyce, Chairman and Chief Executive Officer; Scott Randolph, Chief Financial Officer; William J. Sichko, Jr., Chief Administrative Officer; and Billy Whalen, Chief Information Officer. Information on their experience and backgrounds is provided in Appendix D hereto.

Having successfully operated a significant lime production facility in Australia that produced almost five times the amount of lime currently produced by the Lime Plant, Peak has demonstrated experience in managing the operations of a large lime plant. Peak's Australian lime facility consisted of four rotary lime kilns that employed production methods similar to the Lime Plant (although the Lime Plant operates only one rotary kiln). Moreover, the markets served by Peak's Australian operation were similar to those that the Lime Plant targets.

Peak also has extensive experience in successfully acquiring and managing businesses that involve shared site arrangements and long-term supply agreements. These businesses include a business located on a site shared with ICI in Runcorn, United Kingdom; a business located on a site shared with Eni in Larderello, Italy; and, most notably, a business located on a site shared with Astaris (a joint venture between FMC and Solutia) in Lawrence, Kansas, where Peak operates a phosphorus pentasulfide plant acquired as the result of a Commission-ordered divestiture. In that April 2000 transaction, the Commission approved Peak as the purchaser of FMC's phosphorus pentasulfide plant, and approved the long-term agreements under which Astaris continues to provide site services and raw materials to Peak.

During the eighteen months since Peak acquired the phosphorus pentasulfide business, Peak has made significant improvements in the operating practices and performance of the business. In particular, the business has achieved over 30% growth in sales volume, was awarded an outstanding supply rating from the two largest customers and has been re-certified ISO 9002.

IV. Conclusion

The proposed divestiture of the Lime Assets to Peak will accomplish the purposes of the Consent Order and remedy any alleged lessening of competition in the production and sale of lime in the Southeast region that may result from Lafarge's acquisition of Blue Circle. Peak has the experience and the resources necessary to ensure that the Lime Assets will prosper as a separate, competitive supplier of lime in the United States, particularly in the Southeast region. Furthermore, because Peak currently does not produce or sell lime in the United States, the sale of the Lime Assets to Peak will facilitate entry of a strong, new competitor in the lime industry. Accordingly, the Parties respectfully request that the Commission approve the proposed divestiture and acquirer.

Respectfully submitted,

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CONFIDENTIAL APPENDIX A

[REDACTED]

CONFIDENTIAL APPENDIX B

[REDACTED]

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CONFIDENTIAL APPENDIX C

[REDACTED]

APPENDIX D

Biographies of Peak Principals

1. Michael R. Boyce, *Chairman and Chief Executive Officer*

Prior to April 1998, Mr. Boyce was President and COO of Harris Chemical Group as well as COO of its operating units, North American Salt Company, North American Chemical Company, Great Salt Lake Minerals Company and Harris Chemical Europe Ltd. He worked in that capacity from January 1990 through March 1998. Mr. Boyce was also CEO of Penrice Soda Products Pty. Ltd. in Australia. Before joining Harris Chemical Group, he was with General Chemical, where he spent two years as Vice President and General Manager of its Industrial Chemicals Division.

Prior to joining General Chemical, Mr. Boyce was President of Catalyst Resources, Inc., a subsidiary of Phillips Petroleum Company, which manufactures polypropylene and polyethylene polymerization catalysts.

From 1983 through 1986, Mr. Boyce was Vice President and General Manager of Sylvachem Corporation, a wholly owned subsidiary of SCM Corporation, a company active in specialty chemicals. Earlier in his career, he was with Union Carbide, where he held a variety of positions in business management, sales and marketing, and manufacturing.

A graduate of West Virginia State University with a BS in Chemistry, Mr. Boyce also attended the University of Houston's Graduate School of Business, and is a graduate of Harvard University's Advanced Management Program.

2. Scott H. Randolph, *Chief Financial Officer*

Prior to joining Peak Investments in 2000, Mr. Randolph was Vice President and General Manager of the Worldwide Boron Business of IMC Global and Managing Director of Società Chimica Larderello, the Italian subsidiary of IMC Global. The company operated with total worldwide sales of $130 million.

From 1995 to 1997, Mr. Randolph was Vice President of Strategic Planning and Development for Harris Chemical Group, reporting to the CEO. From 1993 through 1995, he served as Vice President of Finance and Administration for Harris Chemical Group Europe and a Director of Salt Union, SCL and Harris Chemical Europe.

Prior to that, Mr. Randolph was Site Controller for North American Chemical Company and the Trona Railway (Trona, California), subsidiaries of the Harris Chemical Group. Before moving to Trona, Mr. Randolph held positions in finance and marketing analysis with General Chemical Corporation in Wyoming and New Jersey. A former nuclear-trained naval officer, Mr. Randolph has a BS in Applied Science from the United States Naval Academy, and an MBA from The George Washington University. He has been a CMA since 1991.

3. William J. Sichko, *Chief Administrative Officer*

Prior to joining Peak Investments in 1999, Mr. Sichko was Senior Vice President - Human Resources for Harris Chemical Group with responsibility for 3,500 employees in the United States, Canada, the United Kingdom, Germany, France, Italy and Australia. He also acted as the company's Labor and Employment Counsel. Additionally, Mr. Sichko was President of Searles Valley Residences and Searles Valley Water Company, wholly-owned subsidiaries of Harris Chemical Group.

Following IMC Global's acquisition of Harris Chemical Group in 1998, Mr. Sichko was named Senior Vice President of IMC Global, reporting directly to the Chairman and CEO.

Before joining Harris Chemical Group, Mr. Sichko was with General Chemical where he held the position of Director - Industrial Relations from 1987 through 1991.

Earlier in his career, Mr. Sichko was with United States Steel Corporation where he held various positions in human resources.

Mr. Sichko is a graduate of the United States Naval Academy. He holds a JD from Duquesne University School of Law. He has also attended the University of Pittsburgh's Graduate School of Business.

4. Billy G. Whalen, *Chief Information Officer*

Prior to joining Peak Investments, Mr. Whalen was Director of Information Services for MAC Equipment and Chief Information Officer for SOS Staffing.

Prior to 1999, Mr. Whalen was Director of Information Systems for Harris Chemical Group, responsible for hardware and software operations and development throughout the United States, Canada, the United Kingdom, Germany, France, Italy, and Australia. Harris Chemical Group operated with a total annual turnover of $1.2 billion.

Before joining Harris Chemical Group, Mr. Whalen held various management and technical positions with Phillips Petroleum for 17 years. During that time, he worked in Phillips' Chemicals and Plastics divisions around the world, including in the United States, Southeast Asia, Europe and Latin America. Mr. Whalen attended Eastern Kentucky University and the University of Kentucky and received a BS in Computer Science from Fugazzi College. In addition, Mr. Whalen represented Phillips Petroleum in an advanced computer science program at the MIT's Sloan School of Management.