PUBLIC VERSION

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of Nestle Holdings, Inc., a corporation, and Ralston Purina Company, a corporation.	)	Docket No. C-4028

PETITION OF J.W. CHILDS EQUITY PARTNERS II, L.P. FOR PRIOR APPROVAL OF A TRANSACTION WITH THE CYPRESS GROUP L.L.C. INVOLVING THE MEOW MIX COMPANY

Pursuant to Section 2.41(f) of the Commission's Rules of Practice and Procedure, 16 C.F.R. §2.41(f), and Paragraph VI of the Commission's Order *in the matter of* Nestle Holdings, Inc. and Ralston Purina Company (Dkt No. C-4028), J.W. Childs Equity Partners II, L.P. ("J.W. Childs") respectfully requests that the Commission approve the sale of approximately ninety percent of J.W. Childs' interest in The Meow Mix Company ("TMMC") to investment affiliates controlled by The Cypress Group L.L.C. ("Cypress").

Background

On December 11, 2001, the Federal Trade Commission entered a final order in connection with the acquisition of Ralston Purina Company ("Ralston") by Nestle Holdings, Inc. ("Nestle"). The Commission stated, *inter alia*, that the purpose of its order was to remedy the Commission's concerns that the merger of Nestle and Ralston would substantially lessen competition in the dry cat food market in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act. Among its provisions, the Order required Nestle: (1) to divest Ralston's Meow Mix and Alley Cat brands and related assets to J.W. Childs; (2) to co-pack both cat food brands comment relating to this petition, J.W. Childs has created, and is filing with this petition, a public version by redacting confidential information.

Description of the Proposed Transaction

Pursuant to Paragraph VI of the Decision and Order, the Commission requires that "J.W. Childs shall not, for a period of five (5) years from the date this Order becomes final, sell or otherwise convey, directly or indirectly, all or substantially all of the Ralston Assets (excluding transactions in the ordinary course of business, such as sales of inventory to customers) to any Person without prior approval of the Commission." With this petition, J.W. Childs now seeks the Commission's approval to sell the majority of its interest in TMMC to Cypress. Under J.W. Childs' ownership, the assets the Commission required to be divested have been transformed into a competitively viable stand-alone business unit, The Meow Mix Company. The sale of TMMC to Cypress, because it is now a fully-functioning, independent business organization, will not disrupt the ongoing company operations. The proposed buyer, Cypress, is both experienced and financially capable of successfully replacing J.W. Childs as majority owner of TMMC. In addition, J.W. Childs will retain a significant ownership interest in TMCC (approximately % of its original equity investment), which will provide substantial fiscal incentives to ensure TMMC's continued success in the long-term.

On July 18, 2003, J.W. Childs entered into a Stock Purchase Agreement with Cypress by which, if the Commission approves, Cypress and TMMC's existing management will purchase approximately a percent interest in TMMC for approximately . Because TMMC is a self-contained business unit among J.W. Childs' several portfolio enterprises, the proposed transaction encompasses all of the business operations and assets related to the Meow Mix and Alley Cat product lines.[1] A copy of the executed Stock Purchase

[1] The sole exception is limited to .

Agreement, including all attachments and exhibits pertaining thereto, is attached to this petition as Confidential Exhibit A.

J.W. Childs and Cypress filed Premerger Notification and Report Forms with the Premerger Notification Office of the Federal Trade Commission and the Antitrust Division of the Department of Justice on July 28, 2003. On August 11, 2003, the parties were granted early termination of the statutory Hart-Scott-Rodino premerger waiting period.

The Proposed Sale of The Meow Mix Company Will Not Disrupt the Company's Operations Or Threaten Its Competitive Viability

The Commission's Order required divestiture of a package of assets that were not a cohesive unit or stand-alone business. The assets, two brands and related assets, had to be disentangled from Ralston's pet food products business operations.[2] Under the management team assembled by J.W. Childs, this collection of assets has been transformed into a competitive business with research and development expertise, state-of-the-art manufacturing, proven distribution, and demonstrable market and financial strength. The management team responsible for this success remains with the business they have created and looks forward to greater opportunities for success in partnership with Cypress as owners of TMMC. Moreover, under the proposed agreement, J.W. Childs retains a significant financial stake in TMMC's continued success. This transfer of ownership, therefore, will neither disrupt nor threaten the competitive viability of The Meow Mix Company.

[2] Commissioner Anthony expressed some concerns regarding the nature of the assets being divested, namely that the assets were not part of an ongoing business operation. *See* Statement of Commissioner Sheila F. Anthony ("The assets to be divested consist of two proven cat food brands and little else. Standing alone, these brands do not constitute a complete, ongoing business. Rather, J.W. Childs will have to create a new competitor largely from whole cloth.").

In the twelve months prior to J.W. Childs' acquisition, Meow Mix sales had by volume, and Alley Cat sales had . by volume.[3] . In the twelve-month period ending June 15, 2003, Meow Mix sales were by volume, and Alley Cat sales were .[4] For year-to-date 2003, Meow Mix sales by volume are and Alley Cat sales are [5] In addition, the brands have of the overall dry cat food market.[6] Moreover, Meow Mix and Alley Cat have remained the #1 brands (in dollars) in their respective segments (Premium and Value), increasing market share from , respectively.[7]

The Meow Mix Company also remains strong financially.

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TMMC's success has been due in no small part to the experienced senior management team put together by J.W. Childs, . The team has been led since its inception by Richard Thompson,

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Beginning at the time of the divestiture, TMMC obtained its supply of product from Nestle under a co-packing agreement entered into pursuant to the Commission's Order and received from Nestle certain technical support mandated by the Order. The Commission also required that a Monitor Trustee with expertise in the industry be engaged to help ensure that the Commission's purposes under the Order were achieved.

TMMC's production needs are met through a state-of-of-the-art manufacturing facility located in Decatur, Alabama. Over the last year, TMMC has made significant investments in the plant, The company has also developed its own sales force and marketing team

In addition, TMMC has developed its own research and development program, with demonstrable results. In June 2003, TMMC launched a hairball control product with a patent-pending formulation.

TMMC is a fully functioning, stand-alone business with significant market strength, a strong management team, state of the art manufacturing facilities, a national distribution system, nationwide sales and marketing operations, a robust new product pipeline, and research and development programs

. Under J.W. Childs' control, TMMC has been transformed from "two proven cat food brands and little else" into a successful stand-alone business. A change in the financial arrangements relating to TMMC will not adversely affect any of the company's business operations.

<u>Cypress Enhances The Prospects for The Meow Mix Company</u>

Background

With its financial resources, commitment, and investment philosophy, Cypress intends to enhance TMMC's position in the dry cat food market and will evaluate the expansion of TMMC into other related markets. Based in New York City and founded in 1994, Cypress ranks as one of the leading private equity firms in the United States. Cypress has $3.5 billion under management, one of only a few private-equity firms with such resources. Those capital commitments, in two separate funds, are chiefly provided by public and private pension funds, banks, insurance companies, endowments, and high net-worth individuals.

The principals of Cypress are highly experienced in finding and cultivating strong companies. The principals formed Cypress after careers at the Merchant Banking group of Lehman Brothers, a premier investment bank. Including their Lehman Brothers' experience, the principals have made 25 investments totaling over $16 billion of transaction value since 1989.

A chief component of Cypress' investment philosophy is the pursuit of growth opportunities through equity-oriented investments. Cypress seeks to place its capital in extraordinary companies where the capital will accelerate a growth strategy implemented by a proven management team. The thesis of the TMMC investment is consistent with this philosophy. Cypress believes that TMMC's strong brand name, industry leading management team, and strong assets, in combination with Cypress capital, set it on a course for extraordinary growth.

Financial Capability

Cypress has the financial capability to purchase and support TMMC and to ensure the continued success of the business. Under Cypress' ownership, TMMC will have access to capital to fund strategic growth initiatives greater than it had under J.W. Childs' ownership. Cypress is making this investment out of its $2.5 billion fund, of which approximately $1.4 billion has been invested (including pending transactions). Accordingly, Cypress has approximately $1.1 billion in additional capital commitments remaining. Pursuant to the terms of its partnership agreement, Cypress has the ability to invest up to   in any single company. By comparison, at the time of the brands' divestiture from Ralston Purina, J.W. Childs Equity Partners II, L.P. had $148 million available for investment in TMMC.

In addition to having ready access to capital from its limited partners, Cypress' track record is one of deploying follow-on capital in its investments in its efforts to support growth. Cypress has made follow-on equity investments in approximately half of its portfolio companies. Besides these direct equity investments, Cypress' financial expertise has benefited its portfolio companies through its assistance in raising capital through various third-party debt and equity financings.

Indeed, in addition to having the capital to finance the acquisition and any future needs of TMMC, Cypress possesses even greater incentive than J.W. Childs to grow the company. J.W. Childs' challenge was rebuilding the infrastructure of the company, so that it could operate as a stand-alone entity. As evidenced by the sales price of this transaction, J.W. Childs succeeded in developing the capabilities of TMCC. Cypress is buying into very different circumstances and its investment thesis calls for the company to grow vigorously over time. For Cypress to achieve the desired return on its $200 million equity investment, TMMC must compete even more strongly in its markets and attain its growth potential. Cypress has confidence TMCC will be a more successful competitor moving forward, and accordingly Cypress has put a large amount of equity capital into this transaction.

Experience

Another key component in Cypress' investment philosophy, and a critical factor to achieving growth, lies in forming partnerships with strong management teams. To date, Cypress' success has typically resulted from partnering with proven management teams with aggressive, but attainable growth plans, and providing them the capital to realize those plans. In

Richard Thompson and his team, Cypress partners with a premier team in the pet food business, as proven by TMMC's performance since divestiture.

Cypress supports its portfolio companies to achieve profitable growth. Its influence is particularly felt in the financing aspects of its portfolio companies. For the growth-oriented companies that Cypress invests in, implementation of a growth strategy is dependent on effective capital raising and disciplined capital spending. With its principals' backgrounds in the financial world, the firm can strengthen the portfolio company's financial base, discipline the company's financial needs, and maneuver it through the capital raising process. Development and delivery of a successful capital strategy, combined with the management team's development and execution of its business plan, results in a more effective company in the marketplace.

In fact, Cypress's portfolio reflects the effectiveness of this strategy. For example, Cinemark, a Cypress company, is a leading operator of movie theatres. Cinemark management has drawn on Cypress' capital markets expertise in prudently expanding and upgrading its movie theatre network. Cinemark's capital markets advice facilitated the company's borrowing of over $1 billion in bank facilities and high yield offerings. With debt and equity capital arranged or provided by Cypress, Cinemark has achieved sales and EBITDA growth every year since Cypress' investment in 1996. Just as importantly, Cinemark's growth has been smart and disciplined, and the company has steered clear of the uncontrolled over-expansion of many other theater chains, which landed those chains in bankruptcy.

Cypress's ability to energize a growth strategy is also seen in its Williams Scotsman investment. This firm is the second largest lessor of mobile office units in North America, behind General Electric. Since Cypress's investment in 1997, the company has achieved exceptional sales growth. Internal sales growth funded by an ample capital expenditure budget and external expansion through acquisitions conservatively funded by equity and debt, have developed Williams Scotsman into a stronger competitor today. During its tenure, Cypress has played an essential role in this growth, including advising on almost $2 billion of fixed income financings, advising on several acquisitions (both completed and rejected) and counseling on various joint ventures and international growth opportunities.

Cypress expects that TMMC management, with its strong background in the pet food industry, will continue to operate the company. Cypress has offered the TMMC team substantial performance-based and equity-linked financial incentives to remain with the business for the long term and to achieve increased levels of financial performance. Cypress will play a vital supporting role in the operation, by supplying the capital and related expertise to extend TMMC's industry leadership.

Conclusion

For the foregoing reasons, J.W. Childs respectfully requests that the Commission approve the proposed sale of TMMC as soon as practicable after expiration of the public comment period.

Respectfully submitted,

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