Analysis of Proposed Consent Order to Aid Public Comment
In the Matter of Cytodyne, LLC, Evergood Products Corp., and Melvin Rich
File No. 032-3144

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Cytodyne, LLC, Evergood Products Corp., and Melvin Rich, individually and as a manager of Cytodyne, LLC and an officer of Evergood Products Corp. (together, "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves practices relating to the advertising and promotion of Xenadrine EFX, a dietary supplement marketed for weight loss. According to the FTC complaint, respondents represented that Xenadrine EFX causes rapid and substantial weight and fat loss, causes permanent or long-term weight loss, and causes rapid and substantial weight loss without the need to diet or increase exercise. The complaint alleges that these claims are false and that the company failed to have substantiation for them. It further alleges that respondents falsely represented that scientific studies prove that Xenadrine EFX causes rapid and substantial weight loss and that it is more effective than leading ephedrine-based diet products.

The FTC complaint also alleges that respondents falsely represented that persons appearing in Xenadrine EFX advertisements achieved the weight loss reported in those ads solely through the use of Xenadrine EFX. According to the FTC complaint, persons who appeared in the Xenadrine EFX advertisements engaged in rigorous diet and/or exercise programs in order to lose weight, and some were provided with a personal trainer. Finally, the complaint alleges that, in presenting testimonials for Xenadrine EFX by consumer endorsers who purportedly lost weight in the ordinary course of using Xenadrine EFX, respondents failed to disclose that the endorsers were paid from $1000 to $20,000 in connection with their endorsement, a fact that would be material to consumers in their decisions about purchasing or using the product.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits representations that Xenadrine EFX or any other product containing green tea extract, bitter orange, or caffeine causes rapid and substantial weight loss or fat loss. It also prohibits representations that any weight loss product causes rapid or substantial weight loss without the need to diet or increase exercise.

Part II prohibits respondents from representing that any weight loss product, dietary supplement, food, drug, or device causes weight or fat loss, causes permanent or long-term weight loss, or enables users to lose weight or fat without the need to diet or increase exercise unless the claim is

true and respondents possess competent and reliable scientific evidence that substantiates the claim. It also prohibits respondents from making any other claims about the health benefits, performance, efficacy, safety, or side effects of any such product unless the claim is true and respondents possess competent and reliable scientific evidence that substantiates the claim.

Part III prohibits any misrepresentation of the existence, contents, validity, results, conclusions, or interpretations of any test or study in connection with the marketing or sale of any weight loss product, dietary supplement, food, drug, or device.

Part IV prohibits any misrepresentation that the experience described in any user testimonial for any weight loss product, dietary supplement, food, drug, or device represents the actual experience of the endorser as a result of using the product under the circumstances depicted in the endorsement.

Part V prohibits any representation about any endorser of any weight loss product, dietary supplement, food, drug, or device unless the respondents disclose any material connection that exists between the endorser and the respondents or any other person or entity involved in manufacturing, marketing, or selling the product.

Part VI of the proposed order allows the respondents to make any representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration ("FDA") standard or under any new drug application approved by the FDA.

Part VII of the proposed order allows the respondents to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VIII provides for the payment of $100,000 to the Commission.

Part IX requires respondents to cooperate in good faith with the Commission's reasonable requests for documents and testimony in connection with this action or any investigations related to or associated with the transactions or the occurrences that are the subject of the FTC complaint.

Part X requires respondents to send a letter to purchasers for resale of Xenadrine EFX notifying them of the Commission's order. It also provides that if respondents learn that any of its resellers or distributors are disseminating any advertisement or promotional material containing prohibited representations, they are required to request that the resellers or distributors stop making such representations and to stop doing business with resellers or distributors that do not comply with this request. Part XI requires respondents to keep copies of the communications required by Part X.

Parts XII through XVI require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to

certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XVII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.