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April 11, 2014

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Hand Delivered

Pennsylvania Insurance Department
Bureau of Company Licensing and Financial Analysis
1345 Strawberry Square
Harrisburg, PA 17120

Re: Petition to Intervene in Proceedings of the Application for Approval to Acquire Control of OneBeacon Insurance Company and Potomac Insurance Company, 43 Pa. Bull. 1157 (Feb. 23, 2013); 43 Pa. Bull. 5778 (Sept. 28, 2013)

Dear Sir/Madam:

Enclosed for filing please find the original and two copies of the Petition to Intervene of the Olin Corporation. Please time and date stamp the additional copy and return it to our courier.

Thank you for your consideration.

Very truly yours,



Patricia C Shea

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Corporate & Financial Regulation
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Pennsylvania
Insurance Department

Enclosure

cc via overnight delivery to:

- Stuart Wrenn (w/enc.)
- James R. Potts, Esquire (w/enc.)
- Steven B. Davis, Esquire (w/enc.)
- Maureen A. Phillips, Esquire (w/enc.)
- Constance B. Foster, Esquire (w/enc.)
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**BEFORE THE INSURANCE DEPARTMENT OF THE
COMMONWEALTH OF PENNSYLVANIA**

*In re Application for Approval to
Acquire Control of OneBeacon
Insurance Company & Potomac
Insurance Company*

) Pursuant to Article XIV of the
) Insurance Company Law of 1921,
) 40 P.S. §§ 991.1401-991.1413
)
) 43 Pa. Bull. 5778 (Sept. 28, 2013)
) 43 Pa. Bull. 1157 (Feb. 23, 2013)

PETITION TO INTERVENE

Interested party Olin Corporation (“Olin”) hereby respectfully petitions to intervene in the above-captioned administrative proceeding, in which Trebuchet US Holdings, Inc., a subsidiary of Bermuda-domiciled Armour Group Holdings Limited (collectively, “Armour”), seeks the approval of the Pennsylvania Insurance Department (the “Department”) to acquire OneBeacon Insurance Company and its subsidiary, OneBeacon America Insurance Company (collectively, “OBIC”) and other related entities (together with OBIC, the “Runoff Entities”) from OBIC’s parent, OneBeacon Insurance Group LLC (together with its parent, OneBeacon Insurance Group, Ltd., “OneBeacon”). In support of its Petition, Olin states as follows:

1. Olin seeks to intervene in the Department’s proceedings because there is a significant risk that the proposed sale of the Runoff Entities to Armour (the “Proposed Transaction”), as currently structured, would unfairly and unnecessarily impair Olin’s efforts to collect on its claims against OBIC, including its sizeable and imminent judgment against OBIC.

2. Olin purchased several insurance policies from OBIC’s predecessors, under which Olin made claims for coverage of substantial environmental clean-up costs associated with numerous sites. In November 2013, Olin obtained a jury verdict against OBIC in the U.S. District Court for the Southern District of New York, relating to coverage of environmental

clean-up costs incurred in connection with five of those sites. *See Olin Corp. v. Ins. Co. of N. Am., et al*, No. 84 Civ. 1968 (S.D.N.Y.) (the “New York Litigation”). While the amount of Olin’s damages is expected to be set at a hearing before the district court in April 2014 and thereafter entered as part of a judgment, Olin claims that OBIC is obligated to pay it more than \$60 million in past costs and prejudgment interest, plus future costs.

3. In addition, Olin has a further claim against OBIC in the New York Litigation, brought under Mass. Gen. Laws Ch. 93A, which was bifurcated and has been set for trial beginning on December 1, 2014. Should Olin prevail on that claim, its damages (and OBIC’s liability to Olin) could be trebled. Thus, Olin’s judgment against OBIC could grow to nine-figures by the end of 2014.

4. Olin has a direct and currently unrepresented interest in the Proposed Transaction. The stated purpose of the Proposed Transaction is to convert OBIC into a runoff entity managed by Armour, thereby allowing OneBeacon to permanently segregate OBIC’s environmental and other “long-tail” liabilities from OneBeacon’s ongoing income stream and assets. As several other policyholders have indicated, the publicly-available information shows that the Proposed Transaction will leave OBIC with insufficient liquidity and assets to satisfy policyholder claims. Unlike these other policyholders, however, Olin has a substantial verdict against OBIC, the collectability of which may be seriously affected by the Proposed Transaction.

5. Moreover, OBIC’s post-sale undercapitalization may be worse than initially feared given the verdict Olin has obtained against OBIC. Among other things, the district court in the New York Litigation ruled that all of Olin’s covered costs incurred from 1970 *forward* should be allocated to the 1970 policies Olin purchased from OBIC and others – policies which do not contain an applicable pollution exclusion but which do include a provision (known as a

continuing-coverage provision) providing coverage for environmental loss extending beyond 1970. Although this policy interpretation has been affirmed by the U.S. Court of Appeals for the Second Circuit in connection with identical provisions in other policies, *see Olin Corp. v. Am. Home Assurance Co.*, 704 F.3d 89 (2d Cir. 2012), OBIC continues to dispute its application to the Olin policies in the New York Litigation. And because OBIC has refused to disclose its reserves for Olin's claims, it is unclear whether OBIC's reserves properly account for this mandated allocation of post-1970 damages (or any potential trebling of such damages).

6. Thus, there remain serious questions about the reasonableness (and legitimacy) of the Proposed Transaction, including whether it will deprive Olin and other policyholders of their rightful claims and bargained-for insurance benefits.

7. Because of the substantial risk that Olin may be unfairly prejudiced by the Proposed Transaction, coupled with the plain fact that Olin's interests are not adequately represented by the current parties to this proceeding, Olin's intervention is warranted. Indeed, through its intervention, Olin can provide the Department and its independent actuaries with detailed information about its substantial verdict and other claims against OBIC, which will ensure that the Department has complete and accurate information before it when deciding this matter of great public importance.

8. Accordingly, and as discussed in further detail below, Olin respectfully requests that the Department grant Olin's Petition to Intervene, grant Olin access to all materials filed in connection with the Proposed Transaction (including those designated as confidential), provide Olin the opportunity to file written comments, analyses, objections and/or other submissions in advance of the Department's decision, and permit Olin to participate in all aspects of this proceeding going forward, including any hearings that the Department conducts.

BACKGROUND

Olin's Claims & The 2013 Verdict

9. Olin is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Missouri. Olin operates in primarily three business segments: chlor alkali products, chemical distribution and Winchester ammunition.

10. Between the 1950s and 1973, Olin purchased nine excess or umbrella Commercial General Liability insurance policies from OBIC's predecessors-in-interest, which provide coverage for environmental and similar long-tail liabilities.¹ The policies are "occurrence-based" policies that provide for indemnification, up to the policy limits, of all of Olin's covered losses that are allocated to the policy year or years, regardless of when the claims for such indemnification are made.

11. In 1984, Olin sued its commercial general liability and excess insurers, including OBIC's predecessors, after they failed to indemnify Olin against claims for bodily injury and property damage related to environmental damage at numerous manufacturing and storage sites. *See Olin Corp. v. Ins. Co. of N. Am.*, No. 84 Civ. 1968 (S.D.N.Y.). That New York Litigation is still pending and has been divided into site-specific sub-proceedings. The most recent proceeding concerned Olin's claims against OBIC for indemnification of certain costs incurred in connection with the environmental clean-up of five sites, located in Alabama, Georgia, New

¹ For ease of reference, Olin refers herein to OBIC and its predecessors collectively. Those predecessors, whose obligations OBIC and its affiliates have assumed, include Commercial Union Insurance Company, Employers' Surplus Lines Insurance Company, The Employers' Liability Assurance Corporation, Ltd., and Employers Commercial Union Insurance Company of America. The relevant policies include: (1) Employers' Surplus Lines S 10326; (2) Employers' Surplus Lines S 10816; (3) Employers' Liability Assurance E16-8057-001; (4) Employers' Liability Assurance E16-8057-002; (5) Employers' Liability Assurance E16-8057-003; (6) Employers' Liability Assurance E16-8057-004; (7) Employers' Commercial Union EY 8057-011; (8) Employers' Commercial Union EY 8057-012; and (9) Employers' Commercial Union EY 8057-013.

Jersey, New York, and Ohio (the “Five Trial Sites”). Olin sought coverage of such costs primarily under three OBIC policies incepting in the 1970 policy year.

12. In November 2013, after a five-week jury trial, Olin completely prevailed on its coverage claims against OBIC related to the Five Trial Sites, obtaining a jury verdict in its favor (the “2013 Verdict”). The Jury rejected OBIC’s defenses to coverage, and adopted in whole Olin’s proffered allocation of damages. The district court will apply that allocation to determine the amount of Olin’s damages at a hearing scheduled for April 22-23, 2014. Olin claims that under such allocation, it is entitled to in excess of \$60 million in past damages and prejudgment interest, plus future damages.

13. Relevant to the allocation issue is the Second Circuit’s ruling on the application of a continuing-coverage provision in Olin’s policies (including the OBIC policies) known as “Condition C.” *See Olin Corp. v. Am. Home Assurance Co.*, 704 F.3d 89 (2d Cir. 2012). Condition C provides, in part, that to the extent damage “is continuing at the time of termination of this Policy, the Company will continue to protect the Insured for liability in respect of such personal injury or property damage without payment of additional premium.” The Second Circuit held that Condition C obligates insurers “to indemnify Olin not only for property damage occurring during the policy period, but also for property damage arising from covered occurrences that continue[] after the policy period.” *Id.* at 105. The *Olin* ruling represented a substantial departure from how OBIC and other insurers calculated and reserved for losses under policies that contain Condition C.

14. In the most recent trial in the New York Litigation, the Jury found that, for each relevant site, environmental damage occurred during 1970, and continued for several years thereafter. Thus, applying Condition C to Olin’s claims, OBIC is obligated to pay, up to its

policy limits, all of the damages that the Jury allocated to 1970 *and all later years* – for each of the Five Trial Sites.

15. Notwithstanding the Second Circuit's clear and binding precedent, OBIC argued before the district court that Condition C does not apply to Olin's claims – an argument which the district court rejected as a matter of law. Still, OBIC persists in claiming that Condition C does not apply, thus raising serious questions as to whether OBIC has yet to properly reserve for this mandated allocation of liability.

16. In addition, Olin has asserted an unfair trade practices claim against OBIC, pursuant to Mass. Gen. Laws Ch. 93A. The district court bifurcated that claim from Olin's coverage claims, and has set Olin's Ch. 93A claim for trial beginning on December 1, 2014. In connection with its Ch. 93A claim, Olin seeks, among other things, attorneys' fees plus an award trebling the amount of its coverage-related damages, as Olin anticipates will set by the district court at the April 2014 hearing.

17. Because OBIC has refused to disclose to Olin any information concerning its reserves or applicability of reinsurance for Olin's claims, there is serious doubt as to whether OBIC's proposed post-sale capitalization will sufficiently account for the material risk that its already sizeable liability to Olin may be trebled by the end of 2014.

18. Moreover, Olin almost certainly will incur substantial future costs at certain of the Five Trial Sites, for which OBIC is also liable. And, Olin has other, unresolved claims against OBIC in connection with additional sites that have not yet been the subject of any settlement or trial in the still-pending New York Litigation. Thus, OBIC's liability to Olin likely will continue to grow beyond 2014 and, again, it is unclear whether OBIC has adequately reserved for those losses as well.

Proposed OneBeacon/Armour Transaction

19. In February 2013, Armour and OneBeacon submitted a Form A Statement Regarding the Acquisition of Control of a Domestic Insurer (“Form A”) related to OneBeacon’s proposal to sell the Runoff Entities, including OBIC, to Armour as part of a “restructuring” that OneBeacon is pursuing to “separate its ongoing specialty insurance business from certain risks currently in run-off.” *See* Form A at 2.

20. As OneBeacon disclosed in Item 1 of its 2013 10-K, the bulk of its runoff business consists of “asbestos and environmental reserves.” *See* OneBeacon Insurance Group, Ltd. Form 10-K, at 1 (Fiscal Year Ended Dec. 31, 2013) (“OneBeacon 2013 10-K”). In other words, by selling OBIC, OneBeacon would divest itself of precisely the kinds of obligations for which it (through OBIC) is liable to Olin pursuant to the 2013 Verdict. Olin therefore has a substantial interest in ensuring that the Proposed Transaction will leave OBIC with sufficient assets and liquidity to satisfy any judgment entered pursuant to the 2013 Verdict, as well as Olin’s other present and future claims under its OBIC policies.

21. OneBeacon has stated that it expects that the Department will hold a public hearing in connection with the Proposed Transaction, and that it expects that the transaction will close in mid-2014. OneBeacon 2013 10-K at 1, 25.

Concerns Raised by the Proposed Transaction

22. Highlighting the need for intervention, OneBeacon and Armour have designated substantial portions of their filings in this proceeding – including highly relevant information concerning how they account for their current and future liabilities to Olin and other policyholders – as “confidential.”

23. Although OneBeacon and Armour have resisted producing complete information regarding the Proposed Transaction, Olin agrees with the other interested parties that have petitioned to intervene that the publicly-available information concerning the Proposed Transaction raises serious concerns about OBIC's ability to satisfy its current and future obligations to policyholders based on coverage for long-tail liabilities.

24. Olin hereby joins in and incorporates by reference the arguments raised by the other interested policyholders that have petitioned to intervene in these proceedings,² and submits this Petition and seeks intervention to provide additional information and address ongoing issues concerning the unique and substantial ways in which the Proposed Transaction may prejudice Olin.

25. Indeed, since the initial petitions to intervene have been filed, additional information has come to light that further heightens the concerns over whether the Proposed Transaction is appropriate or legitimate. By way of a non-exhaustive summary, the following are just some of the troubling aspects of the Proposed Transaction.

26. **Undercapitalization of Runoff Entities.** The Proposed Transaction is designed to allow OneBeacon to unload the substantial liabilities associated with its legacy commercial general liability policies, which remain heavily exposed to current and future asbestos, environmental, toxic tort and other long-tail claims. By all accounts, the ultimate amount of these liabilities is difficult to predict, both in terms of magnitude and timing. Yet in the face of this uncertainty, the Proposed Transaction seeks to eliminate OBIC's continued access to the

² Specifically, Olin hereby joins in the intervention- and discovery-related papers filed to date by: (1) Colgate-Palmolive Company ("Colgate"); and (2) an *ad hoc* group consisting of The Pennsylvania Manufacturers' Association, Associated Industries of Massachusetts, Belden Inc., Crosby Valve, LLC, Invensys, Inc., ITT Corporation, Meritor, Inc., PolyOne Corporation, The Proctor & Gamble Company, Rockwell Automation, Inc., 3M Company, United Technologies Corporation, and The William Powell Company (the "PMA Group").

income stream and pooled reserves and reinsurance associated with OneBeacon's profitable and ongoing underwriting operations, and replace it with a one-time capital infusion and new reinsurance arrangements whose terms have not been fully disclosed. Nothing in the publicly-disclosed record, however, provides any indication that this one-time infusion will be sufficient to satisfy all of OBIC's current and future liabilities.

27. Moreover, as a runoff entity, it is not anticipated that OBIC will generate any future operating revenue. Indeed, pursuant to the Stock Purchase Agreement among the Armour and OneBeacon parties dated October 17, 2012 ("SPA"), OneBeacon would sell OBIC (and certain other entities) to Armour for a purchase price that the parties candidly admit may be calculated at a negative number. *See* Form A at 8; SPA at § 2.1(c); Doc. 044, PMA Group Petition to Intervene at 12 (Apr. 23, 2013) ("PMA Group Pet."); Doc. 061, Letter from Jerry S. Goldman to Robert Brackbill, Jr. at 9 (July 23, 2013). OneBeacon admitted in its 2013 10-K that it will experience an "ultimate loss on the sale of the Runoff Business." OneBeacon 2013 10-K at 48. Although the Department may condition approval of the transaction on the contribution of additional capital to OBIC in exchange for one or more surplus notes, the parties attempt to cap the amount that OneBeacon may be compelled to contribute. *See* Form A at 8; SPA at § 5.19; *see also* OneBeacon 2013 10-K at 1, 37. The high likelihood of a negative purchase price, coupled with limitations on OneBeacon's obligation to capitalize OBIC, suggests the transaction is nothing more than an attempt by OneBeacon to shed itself of unprofitable lines of business at the expense of policyholders.

28. **Runoff Entities Have Been Stripped of Substantial Value.** OneBeacon and OBIC have recently taken actions that have stripped OBIC of value, thus casting further doubt on the adequacy of OBIC's post-sale capital. Before the Proposed Transaction was presented to the

Department, OBIC and other of the Runoff Entities paid special dividends, which according to Marsh Risk Consulting, resulted in the extraction of more than \$700 million in previously-available capital. *See* PMA Group Pet. at 12, 15; Doc. 061 at 6, 8-9. As a result, Fitch Ratings placed the OneBeacon runoff entities on “Rating Watch Negative,” stating that the pre-sale special dividends represented a “sharp reduction in capital levels,” and warning that “[s]hould such weakened capital levels be maintained by Armour management post sale, or should Armour management fail to provide clarity with respect to future capital levels, Fitch would expect to downgrade the ... ratings of the runoff entities.” *See* Fitch Ratings, “Fitch Affirms White Mountains’ Ratings; Maintains OneBeacon Runoff Entities on Rating Watch Negative” (Aug. 28, 2013), https://www.fitchratings.com/creditdesk/press_releases/detail.cfm?pr_id=800623. Fitch has maintained and reaffirmed its negative watch rating for the runoff subsidiaries as recently as March 2014. *See* Fitch Ratings, “Fitch Affirms White Mountains’ Ratings; Maintains Negative Watch on OneBeacon Runoff Subs” (Mar. 11, 2014), https://www.fitchratings.com/creditdesk/press_releases/detail.cfm?pr_id=823343. A.M. Best likewise “has maintained the under review with negative implications status” for the runoff businesses pending the closing of the Proposed Transaction. *See* Best’s Insurance News & Analysis, “A.M. Best Maintains Under Review Status on Ratings of Certain OneBeacon Insurance Group Ltd. Indirect Subsidiaries” (Feb. 27, 2014), <http://www3.ambest.com/ambv/bestnews/presscontent.aspx?altsrc=1&refnum=20842>; *see also* OneBeacon 2013 10-K at 18 (describing negative outlook ratings for runoff subsidiaries).

29. **Runoff Entities Have Inadequate Reserves.** There also are significant questions regarding the adequacy of OBIC’s reserves. As an initial matter, the SPA expressly provides that the parties do not represent or warrant that the loss reserves maintained for the

Runoff Entities will be sufficient. *See* SPA at § 7.8; *see also* Colgate Pet. at 12; Doc. 061 at 9. And if history is any indication, then those post-sale reserves will almost certainly be inadequate.

30. Indeed, the reserves OneBeacon initially assigned to the Runoff Entities have already proven to be substantially understated. In connection with the Proposed Transaction, Towers Watson conducted an independent actuarial assessment of the loss reserves associated with the Runoff Entities, and concluded that the statutory net loss and LAE reserves for the runoff business as of March 31, 2013 were approximately \$50 million less than the *low end* of Towers Watson's estimates, and more than \$500 million less than Towers Watson's high-end estimate. *See* OneBeacon Insurance Group, Ltd. Form 10-Q at 89 (Oct. 28, 2013); OneBeacon 2013 10-K at F-63.

31. In response to that substantial discrepancy, in 2013 OneBeacon increased its reserves for the runoff business – but only by \$78.9 million. *See* OneBeacon 2013 10-K at 37. That increase does not address the concerns raised by Towers Watson, Olin and the other policyholder-petitioners, however, as OneBeacon's 2013 10-K makes clear that the adjustment was due to “non-[asbestos & environmental] loss.” *Id.* Instead, OneBeacon increased its reserves in its “workers compensation, personal auto liability, and excess liability lines of business.” *Id.* at 37, 47. Accordingly, OneBeacon has done nothing to bolster its reserves for environmental and asbestos claims, and there still is no evidence that OBIC's revised reserves are sufficient – particularly given that, even after this increase, OBIC's reserves *remain more than \$400 million below* Towers Watson's high-end estimate of losses.

32. Moreover, OneBeacon recently reported that its gross reserves for environmental claims, prior to reinsurance, were only \$168.7 million for 2013. *See* OneBeacon 2013 10-K at F-69. Yet OneBeacon also reports 329 open environmental claims at the end of 2013. *See id.* at

67. In other words, OneBeacon currently reserved an average of just over \$500,000 for each environmental claim on its books—a strikingly low number given that Olin (and likely other policyholders) have claims against OneBeacon for tens of millions of dollars each, and OneBeacon acknowledges that its estimation of environmental liabilities is subject to “significant uncertainties.” *Id.* at F-70.

33. Additionally, as discussed above, the inadequacy of OBIC’s reserves may be further compounded by the fact that there is no evidence that OneBeacon has adjusted those reserves to account for application of the Condition C/continuing-coverage provisions in Olin’s policies – and likely in the policies of other insureds as well. Indeed, if, as Olin suspects, other of OBIC’s insureds have similar policy language, then OBIC’s currently proposed reserves would be a mere drop in the bucket of OBIC’s actual liability.

34. What is clear is that OneBeacon’s initial reserves for the post-sale Runoff Entities were woefully understated, and left to its own devices, OneBeacon would have short-changed OBIC at the expense of its creditors and policyholders. This calls into question the adequacy of OneBeacon’s revised figures, and lends further support for including policyholder-creditors like Olin in this proceeding, so that the Department can make a fully informed decision based upon complete and accurate information about OBIC’s future liabilities.

35. **Runoff Entities Have Insufficient Reinsurance.** OneBeacon and Armour have claimed that at least some of OBIC’s asbestos and environmental liabilities will continue to be covered by certain preexisting reinsurance treaties and agreements after the transaction closes. *See* SPA at § 5.17. However, OneBeacon and Armour have refused to disclose information that would prove (or disprove) those claims, and the publicly-available information suggests that OBIC’s reinsurance arrangements will be woefully inadequate to cover its significant losses. For

example, OneBeacon has represented that it is entitled to up to \$2.5 billion under the NICO Cover, and as of December 31, 2013, it had ceded \$2.3 billion in expected losses to NICO. *See* OneBeacon 2013 10-K at 66. Yet OneBeacon acknowledges that if it underestimated its asbestos and environmental liabilities, “future losses could exceed the \$198.3 million of protection remaining under the NICO Cover.” *Id.* If the court trebles Olin’s damages in the New York Litigation, Olin’s claims relating to the Five Trial Sites, alone, would approach the full amount of that remaining available reinsurance under the NICO agreement.³ This is plainly insufficient, and as with OBIC’s reserves, OneBeacon and Armour expressly disclaim any representation that the available reinsurance is adequate to cover OBIC’s obligations. *See* SPA at § 7.8; *see also* Colgate Pet. at 12; Doc. 061 at 9. As OneBeacon candidly admitted in its 2013 10-K, “there can be no assurance that the coverage provided under the NICO Cover will ultimately prove to be adequate for [OneBeacon’s] incurred environmental losses.” OneBeacon 2013 10-K at 17.

36. **Claims-Handling Concerns.** There can be little dispute that the structure of the Proposed Transaction creates incentives for OBIC to delay or deny payment of policyholders’ covered claims. Moreover, the other petitioner-policyholders have asserted that Amour, which will manage OBIC after the transaction, “is owned and staffed by individuals with a track record of structuring runoffs as investment opportunities to enrich their shareholders at the expense of policyholders.” *See* PMA Group Pet. at 2; *see also* Colgate Pet. at 8, 11.

37. Further adding to Olin’s claims-handling concerns is that the purported reinsurance available to OBIC comes, at least in part, from arrangements with General Reinsurance Corporation and NICO and its claims subsidiary, Resolute Management, Inc.

³ Neither OneBeacon nor OBIC has provided any information regarding the applicability and adequacy of any reinsurance below the NICO Cover.

("Resolute"). NICO and Resolute, however, were (and continue to be) involved in the handling of Olin's underlying claims – which are the subject of the unfair trade practices (Mass. Gen. Laws Ch. 93A) claim currently pending and set for trial in December 2014 in the New York Litigation.

38. The evidence at the upcoming trial will show that OBIC, acting through NICO and/or Resolute, among other things: failed to acknowledge and act reasonably promptly upon Olin's communications concerning its claims; failed to adopt and implement reasonable standards for the prompt investigation of claims; refused to pay Olin's claims without conducting a reasonable investigation; compelled Olin to institute and prosecute litigation to recover amounts due under its policies; and failed to effectuate prompt, fair and equitable settlements of claims in which liability had become reasonably clear.

39. The evidence also shows that Olin is not alone in being victimized by the deficient claims handling practices of OneBeacon, NICO and Resolute. Those practices, which violate multiple provisions of Mass. Gen. Laws. 93A, were (and continue to be) systemic, and may give rise to unfair trade practices claims by other policyholders as well. If so, this would further understate OBIC's currently-proposed post-transaction reserves and capitalization.

40. Given that Olin is currently litigating its well-substantiated claim that NICO and Resolute, in conjunction with OBIC, engaged in unfair claims handling practices with respect to the underlying claims under OBIC's legacy policies, Olin takes little comfort in OneBeacon's representations that OBIC's liabilities may be reinsured by NICO, with claims continuing to be handled by Resolute.

GROUNDS FOR INTERVENTION

41. With a sizable verdict already in hand against OBIC, and with the prospect of the trebling of those damages by the end of 2014, Olin stands as a policyholder-creditor with a significant interest in the future solvency of OBIC. Moreover, OBIC's liability to Olin likely will continue to grow beyond 2014, as Olin incurs future covered costs associated with the Five Trial Sites, and as the parties (and/or the court) address and resolve Olin's additional covered claims in connection with a number of other environmental sites.

42. The Proposed Transaction, however, raises serious doubt about whether (and for how long) OBIC can operate as a post-sale ongoing concern. Indeed, the publicly-available information indicates that if the Proposed Transaction is consummated, OBIC will have insufficient reserves, reinsurance and/or capital to pay its policyholders' claims. Moreover, by shunting its asbestos and environmental liabilities into a separate run-off entity, any incentives to adjust claims with a view to retaining policyholder business and building a long-term relationship with policyholders will be destroyed.

43. Rather than answer Olin's and other interested policyholders' valid questions about the adequacy and legitimacy of the Proposed Transaction, OneBeacon and Armour have chosen to hide behind the veil of confidentiality, shielding from the public record critical information that might shed light on whether the Proposed Transaction will deprive Olin and other policyholders of the bargained-for benefits of their valid and binding insurance contracts, including their rights to receive prompt payment of their covered claims.

44. Olin satisfies the standards for intervention that apply to these proceedings pursuant to 31 Pa. Code § 56.1 and 1 Pa. Code § 35.27-.28 because the Department's consideration of the transaction will directly affect Olin's rights as a policyholder and (soon to

be) judgment creditor, and none of the parties to the proceeding adequately represents Olin's unique interests. Intervention is consistent with the statute under which the Department must evaluate the Proposed Transaction, and Olin can aid the Department in its analysis by providing policyholder input generally and information about the 2013 Verdict specifically.

I. Olin Is Entitled to Intervene Under the Pennsylvania Administrative Code.

45. Pennsylvania's general administrative rules of practice and procedure apply to Department proceedings like this one. 31 Pa. Code § 56.1.

46. Those rules permit intervention by anyone who "claim[s] a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought." 1 Pa. Code § 35.28(a).

47. For those purposes, a party has an interest sufficient to intervene where it has "[a]n interest which may be directly affected and which is not adequately represented by existing parties, and as to which petitioners may be bound by the action of the agency in the proceeding." 1 Pa. Code § 35.28(a)(2). For example, "consumers, customers or other patrons served by the applicant or respondent" may have an adequate interest to justify intervention. *Id.*

48. Olin has a direct interest in these proceedings because it is an OBIC policyholder and creditor that will be affected by the Proposed Transaction.

49. Like the other petitioner-policyholders, Olin is a "customer" that has been and would continue to be "served" by one or more parties to the Proposed Transaction. *See* PMA Group Pet. at 19; Colgate Pet. at 9. As discussed above, Olin paid substantial premiums to OBIC's predecessors for insurance policies that cover environmental and other long-tail liabilities, which OBIC has assumed. Olin has submitted numerous claims under those policies, many of which remain open, and Olin could have future claims under such policies as well.

Moreover, Olin recently obtained a verdict in its favor entitling it to coverage, under several OBIC policies, of substantial environmental clean-up costs and losses related to five specific sites. The amount of OBIC's liability under those policies is expected to be more than \$60 million, and may be trebled in connection with the upcoming unfair claims-handling practices trial, set to begin in December 2014.

50. The Department has been asked to consider the Proposed Transaction, in which Armour would acquire and assume responsibility for handling and paying OBIC's liabilities. Olin must ensure that, if the deal is consummated, Armour: (1) will have adequate assets and liquidity to pay the judgment(s) to which Olin is entitled by virtue of the 2013 Verdict; and (2) will handle and promptly pay Olin's remaining (and any future) covered claims under the OBIC policies; and (3) will not attempt to avoid OBIC's obligations or otherwise act in a manner detrimental to Olin's rights as a policyholder and judgment creditor. Olin therefore has a direct, substantial interest in the Department's consideration of the Proposed Transaction.

51. Olin's interest in these proceedings is not adequately represented by any of the parties that are currently involved. As the other would-be intervenors have pointed out, the nature of the transaction suggests that OneBeacon and Armour are acting adversely to policyholders' interests. *See* PMA Group Pet. at 19; Colgate Pet. at 7-8. OneBeacon has admitted that the purpose of the Proposed Transaction is to rid itself of the very liabilities that Olin and the other intervenors are attempting to collect. *See* Colgate Pet. at 7-8. Armour has no incentive to protect policyholders' interests given that the Proposed Transaction, as structured, incentivizes Armour to maximize returns to its shareholders by minimizing payouts to policyholders. *See id.* at 8.

52. While Olin shares the other intervenors' concerns about the transaction, those intervenors also do not adequately represent Olin's interests. Olin stands in the unique position of already having secured a verdict against OBIC with respect to liability for coverage of certain of the risks being transferred in the Proposed Transaction.

53. Also, Olin has another trial against OBIC scheduled for December 2014, at which Olin will show that OBIC's claims-handling practices violated Mass. Gen. Laws Ch. 93A. As discussed above, if Olin prevails on its Ch. 93A claim, it would substantially and materially increase the damages to which Olin is entitled.

54. Moreover, Olin's policies contain a Condition C/continuing-coverage provision that allocates to those policy years losses incurred in subsequent years. Olin therefore has a particular interest in, and can provide critical information relevant to, the issue of whether OBIC has properly reserved Olin's claims (as well as the claims of any other policyholders with similar policy language).

55. Olin therefore has a unique and direct financial interest in ensuring that OBIC is adequately capitalized, properly reserved, and capable of investigating, handling and promptly paying long-tail claims under their legacy policies.

II. Olin's Intervention Is Consistent with the Insurance Holding Companies Act.

56. Olin's participation in these proceedings also will aid the Department in analyzing the Proposed Transaction under the factors set forth in the Insurance Holding Companies Act ("IHCA").

57. The IHCA requires the Department to consider a number of factors from the perspective of policyholders like Olin, including whether:

- “The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or *prejudice the interest of its policyholders*.” 40 Pa. Stat. § 991.1402(f)(1)(iii) (emphasis added).
- “The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable and *fail to confer benefit on policyholders* of the insurer and are not in the public interest.” *Id.* at § 991.1402(f)(1)(iv) (emphasis added).
- “The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would *not be in the interest of policyholders* of the insurer and the public to permit the merger, consolidation or other acquisition of control.” *Id.* at § 991.1402(f)(1)(v) (emphasis added).

58. By participating in these proceedings, Olin can both evaluate the Proposed Transaction from a policyholder’s and creditor’s perspective, and provide the Department with important information and analysis concerning Olin’s claims against OBIC, including the proper reserving of such claims in light of the Condition C/continuing coverage provisions in Olin’s policies.

59. Contrary to what OneBeacon and Armour have suggested in their responses to the PMA Group’s and Colgate’s petitions, intervention is not prohibited by or inconsistent with the IHCA. The IHCA does not mention (let alone prohibit) intervention.

60. In a strained attempt to block the intervention of interested policyholders, OneBeacon and Armour have incorrectly argued that because policyholders are not one of the enumerated parties entitled to a hearing pursuant to the IHCA, *see* 40 Pa. Stat. § 991.1402(f)(2), they are not permitted to intervene. *See* Doc. 047, Letter from Constance B. Foster to Robert Brackbill at 2 (June 11, 2013). That argument, however, lacks any support in the statutory text or history, is flatly contrary to the express intervention provisions of 1 Pa. Code § 35.28, and further ignores that the Department has the discretion to hold a hearing even if none of the enumerated parties requests one. *See* 40 Pa. Stat. § 991.1402(f)(2). Olin respectfully submits

that the Department should exercise that discretion in this case given the substantial rights and important public interests at stake, and the questionable aspects of the Proposed Transaction that are detailed above. *See also* Doc. 054, Letter from Pamela D. Hans to Robert Brackbill at 4 (May 21, 2013). Indeed, contrary to its prior positions, OneBeacon now “anticipate[s] that the regulatory approval process will include a public hearing at which interested parties may comment on the transaction.” *See* OneBeacon 10-K at 25.

61. Moreover, OneBeacon’s and Armour’s reliance on *LaFarge Corp. v. Commonwealth of Pennsylvania Insurance Department*, 735 A.2d 74 (1999), is misplaced. *See* Doc. 045, Letter from Constance B. Foster to Robert Brackbill at 2 (May 3, 2013). As the PMA Group and Colgate point out, in *LaFarge* the Pennsylvania Supreme Court merely held that policyholders who were given robust participation rights in a Department proceeding were not entitled to an adversarial hearing on a transaction governed by different statutes than those at issue here. *See* Doc. 046, Letter from Paul K. Stockman to Robert Brackbill at 2 (May 18, 2013); Doc. 061 at 2-4. The Pennsylvania Supreme Court did not address the right of policyholders to intervene in proceedings under the IHCA or issue any broad assertion foreclosing the right of interested parties to intervene in regulatory proceedings before the Department. *See* Doc. 054 at 3; Doc. 061 at 2. *LaFarge* does not prohibit intervention and supports the right of policyholders to participate meaningfully in Department proceedings, as Olin and the other petitioners seek to do in this case.

62. OneBeacon’s and Armour’s suggestion that policyholders should content themselves with the opportunity to file public comments misses the point. *See* Doc. 045 at 1. The opportunity to comment on a Proposed Transaction cannot be a meaningful one if Olin and other policyholders are deprived of access to critical information concerning, among other

things, OBIC's specific reserves and reserving methodology, its reinsurance agreements and arrangements, and its loss estimates and assumptions.

63. Instead of providing interested parties with additional information to analyze the transaction in response to their comments, OneBeacon and Armour ask that policyholders merely take at face value their bald assurances that the deal will leave OBIC with adequate capitalization, reserves, and reinsurance, without needing to review any factual support for such claims. *See generally* Doc. 048, Applicants' Response to Substantive Comments (June 21, 2013).

64. Absent any factual support, however, OneBeacon and Armour's statements carry little weight and credibility given that, among other things: OneBeacon's initial reserves were already shown to have been, and continue to be, woefully understated; the publicly-available information presents substantial doubt that the Runoff Entities will have sufficient capital and liquidity to pay policyholder claims; and the track records of NICO and Resolute lend no credence to the promise that, post-sale, policyholder claims will be handled and paid in a reasonable manner.

65. In sum, OneBeacon's and Armour's conclusory, unsupported assurances are cold comfort when critical information about the Proposed Transaction remains under seal. Olin and the other policyholders cannot adequately protect themselves, and cannot highlight for the Department any deficiencies in the proposed treatment of their insurance claims, unless they are permitted full participation rights and access to all of the confidential materials that OneBeacon and Armour have submitted in support of the Proposed Transaction.

PRAYER FOR RELIEF

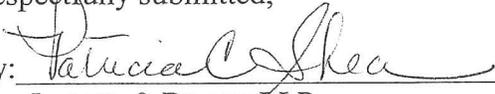
WHEREFORE, for the reasons set forth above, Olin respectfully requests that the

Department :

- a. Grant Olin's Petition to Intervene;
- b. Permit Olin to have complete access to the materials submitted in connection with OneBeacon's and Armour's request for the Department's approval of the Proposed Transaction, including all materials designated as "confidential";
- c. Permit Olin to submit any comments, financial analyses, objections, or other written materials in advance of the Department's decision on the Proposed Transaction;
- d. Permit Olin to participate in all aspects of this proceeding, including participating in any and all hearings that the Department may hold in connection with its consideration of the Proposed Transaction; and
- e. Grant any other relief that the Department deems appropriate.

Respectfully submitted,

April 11, 2014

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that today I served true copies of the foregoing Petition to Intervene via Federal Express overnight delivery, postage prepaid, upon the following counsel of record and participants, in accordance with the requirements of 1 Pa. Code § 33.32.

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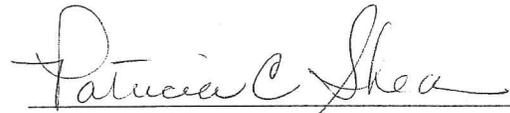
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