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Delaware Enhanced Global Dividend & Income Fund  
Form N-CSR  
February 04, 2015

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM N-CSR**

**CERTIFIED SHAREHOLDER REPORT OF REGISTERED MANAGEMENT  
INVESTMENT COMPANIES**

Investment Company Act file number:	811-22050
Exact name of registrant as specified in charter:	Delaware Enhanced Global Dividend and Income Fund
Address of principal executive offices:	2005 Market Street Philadelphia, PA 19103
Name and address of agent for service:	David F. Connor, Esq. 2005 Market Street Philadelphia, PA 19103
Registrant's telephone number, including area code:	(800) 523-1918
Date of fiscal year end:	November 30
Date of reporting period:	November 30, 2014

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Item 1. Reports to Stockholders

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**The figures in the annual report for Delaware Enhanced Global Dividend and Income Fund represent past results, which are not a guarantee of future results. A rise or fall in interest rates can have a significant impact on bond prices. Funds that invest in bonds can lose their value as interest rates rise.**

**Closed-end fund**

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Unless otherwise noted, views expressed herein are current as of Nov. 30, 2014, and subject to change for events occurring after such date.

Funds are not FDIC insured and are not guaranteed. It is possible to lose the principal amount invested.

Mutual fund advisory services are provided by Delaware Management Company, a series of Delaware Management Business Trust, which is a registered investment advisor. Delaware Investments, a member of Macquarie Group, refers to Delaware Management Holdings, Inc. and its subsidiaries. Macquarie Group refers to Macquarie Group Limited and its subsidiaries and affiliates worldwide.

Investments in Delaware Enhanced Global Dividend and Income Fund are not and will not be deposits with or liabilities of Macquarie Bank Limited ABN 46 008 583 542 and its holding companies, including their subsidiaries or related companies (Macquarie Group), and are subject to investment risk, including possible delays in repayment and

loss of income and capital invested. No Macquarie Group company guarantees or will guarantee the performance of the Fund, the repayment of capital from the Fund, or any particular rate of return.

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Portfolio management review

**Delaware Enhanced Global Dividend and Income Fund**

December 9, 2014

**Performance preview (for the year ended November 30, 2014)**

Delaware Enhanced Global Dividend and Income Fund @ market price	1-year return	+5.02%
Delaware Enhanced Global Dividend and Income Fund @ NAV	1-year return	+4.94%
Lipper Closed-end Global Funds Average @ market price	1-year return	+9.22%
Lipper Closed-end Global Funds Average @ NAV	1-year return	+4.90%

**Past performance does not guarantee future results.**

For complete, annualized performance for Delaware Enhanced Global Dividend and Income Fund, please see the table on page 3.

Index performance returns do not reflect any management fees, transaction costs, or expenses. Indices are unmanaged and one cannot invest directly in an index.

For the fiscal year ended Nov. 30, 2014, Delaware Enhanced Global Dividend and Income Fund returned +4.94% at net asset value (NAV) and +5.02% at market price (both figures reflect all distributions reinvested). Complete annualized performance for the Fund is shown in the table on page 3.

**Searching for yield amid low rates**

Throughout the 12 months ended Nov. 30, 2014, the market rewarded higher yielding securities of all asset types, as income remained scarce in a low interest rate environment.

Central banks in Europe, Japan, and China sought to boost their flagging economies by aggressively loosening monetary policy. The U.S. economy, meanwhile, continued its slow but steady improvement. Against this backdrop, in October 2014 the U.S. Federal Reserve ended its quantitative-easing stimulus program, even as it pledged to keep its target short-term interest rate at essentially zero for some time longer.

U.S. stocks performed well in this environment, with the country's broad stock market, as measured by the S&P 500<sup>®</sup> Index, gaining 16.9% during the fiscal year. Dividend-oriented equities, such as utility stocks, benefited disproportionately as investors searched for yield. Global property stocks, another income-focused asset class, also enjoyed strong results, with the FTSE EPRA/NAREIT Developed Index advancing 15.6%.

U.S. high yield bonds generated a modestly positive return for the 12-month period, but struggled in the second half because of geopolitical concerns in the Middle East and Russia; volatility in equity and U.S. Treasury markets; mutual fund outflows; and heavy new-issue supply. Declining oil prices also hurt results, as energy issues made up a

meaningful portion of the high yield market. During the 12 months ended Nov. 30, 2014, high yield bonds, as represented by the BofA Merrill Lynch U.S. High Yield Constrained Index, returned 4.6%.

### **Strength from U.S. equities, global real estate**

The Fund's results were lifted by its investments in U.S. large-cap value stocks and global real estate equities, which at period end made up 12% and 4% of the portfolio's net assets, respectively. In

the former group semiconductor manufacturers **Intel** and **Broadcom** were notably strong performers, as more-favorable demand helped lift the earnings of both chip-making companies.

Electricity producer **Edison International** was another leading contributor to Fund performance, as utility companies' relatively high dividend payments made them attractive to many investors looking for income. Elsewhere, drug store chain and pharmacy-benefits manager **CVS Health** performed well, as did medical services provider **Cardinal Health**.

The Fund's global real estate equity holdings enjoyed strong absolute performance but tended to lag the property stock market as a whole because of our more defensive approach to the asset class. We believed this stance was warranted, given generally high valuations and asset prices that were rising faster than companies' cash flows.

Within the Fund's real estate equities portion, **Sun Communities**, an owner and developer of manufactured-home communities, was a strong performer. In addition, the Fund experienced strength in the apartment sector, led by **Essex Property Trust** and **Equity Residential**.

In addition, the Fund's use of leverage—a portfolio-management tool designed to obtain a higher return on our equity investments—helped lift Fund performance in light of the stock market's rise.

### **Various performance challenges**

In contrast, the Fund's energy holdings tended to perform poorly—which did not surprise us in light of the sharp drop in oil prices seen in the fall. Portfolio holdings such as energy producers **Marathon Oil** and **Occidental Petroleum** experienced notable declines.

The Fund also saw disappointing results from its non-U.S. equities, which made up about 28% of the portfolio as of fiscal year end. Notably, **Yamana Gold**, a Canadian mining company; **Mobile Telesystems**, a Russian telecommunication services provider; **Standard Chartered**, a U.K.-based financial services company; and **Rexel**, a French distributor of electrical parts and supplies, weighed on the Fund's results. We continued to hold these names in the Fund as of the end of the fiscal year.

Unless otherwise noted, views expressed herein are current as of Nov. 30, 2014, and subject to change for events occurring after such date.

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Portfolio management review

### **Delaware Enhanced Global Dividend and Income Fund**

To achieve the Fund's income objectives, we maintained a sizable allocation to high yield bonds. As of fiscal year end, nearly one-third of the portfolio was invested in this market segment, representing the largest single asset class weighting in the Fund. As mentioned earlier, however, high yield bonds gained only modestly during the period as the market environment turned increasingly challenging for investors in bonds with below-investment-grade credit ratings.

Also of note, the Fund maintained certain positions in derivative securities in an attempt to help manage the portfolio's risk profile. These included a modest amount of foreign currency hedges to manage currency risk associated with the Fund's international fixed income investments. None of these hedges had a material impact on the Fund's performance during the fiscal year.

### **Staying true to our approach**

During the fiscal year, the Fund's composition remained relatively consistent. As always, we continued to focus on the Fund's primary objective: investing in yield-oriented global securities in an attempt to provide shareholders with a high level of income.

At the same time, to manage risk, we also closely considered securities' quality and valuation characteristics. As investors have searched intently for yield, especially among U.S. investments, income-oriented securities have seen their prices rise sharply. This has

made yield increasingly expensive to come by, whether supplied by fixed income securities or by such bond substitutes as utility stocks, master limited partnerships, or certain real estate equities. In this environment, our approach has been to closely manage the portfolio's yield, balancing the need for a competitive income stream with efforts to protect against the risk of falling security prices that could weigh on total return.

During the fiscal year, we saw better performance prospects among U.S. stocks as we have for the past several years while we continued to take advantage of suitable opportunities to invest internationally, given the Fund's global mandate. At period end, we continued to emphasize companies that we believed to be undervalued, had strong cash flows, maintained manageable debt levels, operated diversified businesses, and had a history of delivering consistent dividends. We recognize, however, that there is no guarantee that a dividend-paying company will continue to pay dividends.

As we continue to monitor market conditions, we will seek to position the portfolio to provide a high level of income for our shareholders while simultaneously looking to minimize other characteristics that could potentially weigh on total return.





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Performance summary

**Delaware Enhanced Global Dividend and Income Fund**

**The performance quoted represents past performance and does not guarantee future results. Investment return and principal value of an investment will fluctuate so that shares, when redeemed, may be worth more or less than their original cost. Current performance may be lower or higher than the performance quoted. Please obtain the performance data for the most recent month end by calling 800 523-1918.**

**Fund performance**

Average annual total returns through November 30, 2014

	1 year	5 years	Lifetime
At market price (inception date June 29, 2007)	+5.02%	+8.77%	+4.20%
At net asset value (inception date June 29, 2007)	+4.94%	+11.34%	+5.58%

Diversification may not protect against market risk.

Fixed income securities and bond funds can lose value, and investors can lose principal, as interest rates rise. They also may be affected by economic conditions that hinder an issuer's ability to make interest and principal payments on its debt.

The Fund may also be subject to prepayment risk, the risk that the principal of a fixed income security that is held by the Fund may be prepaid prior to maturity, potentially forcing the Fund to reinvest that money at a lower interest rate.

High yielding, noninvestment grade bonds (junk bonds) involve higher risk than investment grade bonds.

Narrowly focused investments may exhibit higher volatility than investments in multiple industry sectors.

REIT investments are subject to many of the risks associated with direct real estate ownership, including changes in economic conditions, credit risk, and interest rate fluctuations.

The Funds may invest in derivatives, which may involve additional expenses and are subject to risk, including the risk that an underlying security or securities index moves in the opposite direction from what the portfolio manager anticipated. A derivative transaction depends upon the counterparties' ability to fulfill their contractual obligations.

International investments entail risks not ordinarily associated with U.S. investments including fluctuation in currency values, differences in accounting principles, or economic or political instability in other nations.

Investing in emerging markets can be riskier than investing in established foreign markets due to increased volatility and lower trading volume.

If and when the Fund invests in forward foreign currency contracts or uses other investments to hedge against currency risks, the Fund will be subject to special risks, including counterparty risk.

The Fund may experience portfolio turnover that approaches or exceeds 100%, which could result in higher transaction costs and tax liability.

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The Fund performance table and the Performance of a \$10,000 investment graph do not reflect the deduction of taxes the shareholder would pay on Fund distributions or redemptions of Fund shares.

Returns reflect the reinvestment of all distributions. Dividends and distributions, if any, are assumed, for the purpose of this calculation to be reinvested at prices obtained under the Fund's dividend reinvestment policy. Shares of the Fund were initially offered with a sales charge of 4.50%. Performance since inception does not include the sales charge or any other brokerage commission for purchases made since inception. Past performance is not a guarantee of future results.

### Fund basics

As of November 30, 2014

<b>Fund objectives</b>	<b>Fund start date</b>
The Fund's primary investment objective is to seek current income. Capital appreciation is a secondary objective.	June 29, 2007
<b>Total Fund net assets</b>	<b>NYSE symbol</b>
\$209 million	DEX
<b>Number of holdings</b>	
781	

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Performance summary

**Delaware Enhanced Global Dividend and Income Fund**

**Market price versus net asset value** (see notes below)

November 30, 2013 through November 30, 2014

	<b>Starting value (Nov. 30, 2013)</b>	<b>Ending value (Nov. 30, 2014)</b>
Delaware Enhanced Global Dividend and Income Fund @ NAV	\$13.52	\$13.19
Delaware Enhanced Global Dividend and Income Fund @ market price	\$12.25	\$11.96
Past performance is not a guarantee of future results.		

**Performance of a \$10,000 investment**

Average annual total returns from June 29, 2007 (Fund's inception) through November 30, 2014

	<b>Starting value (June 29, 2007)</b>	<b>Ending value (Nov. 30, 2014)</b>
Delaware Enhanced Global Dividend and Income Fund @ NAV	\$10,000	\$14,966
Delaware Enhanced Global Dividend and Income Fund @ market price	\$10,000	\$13,571
Lipper Closed-end Global Funds Average @ market price	\$10,000	\$12,518
Lipper Closed-end Global Funds Average @ NAV	\$10,000	\$11,178

The Performance of a \$10,000 investment graph assumes \$10,000 invested in the Fund on June 29, 2007, and includes the reinvestment of all distributions at market value. The graph assumes \$10,000 invested in the Lipper Closed-end Global Funds Average at market price and at NAV. Performance of the Fund and the Lipper class at market value is based on market performance during the period. Performance of the Fund and Lipper class at NAV is based on the fluctuations in NAV during the period. Delaware Enhanced Global Dividend and Income Fund was



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initially offered with a sales charge of 4.50%. The Fund is currently traded on the secondary market without a sales load. Performance shown in both graphs above does not include fees, the initial sales charge, or any brokerage commissions for purchases. Investments in the Fund are not available at NAV.

The Lipper Closed-end Global Funds Average represents the average return of closed-end funds that invest at least 25% of their portfolio in securities traded outside of the United States and that may own U.S. securities as well (source: Lipper).

The S&P 500 Index, mentioned on page 1, measures the performance of 500 mostly large-cap stocks weighted by market value, and is often used to represent performance of the U.S. stock market.

The FTSE EPRA/NAREIT Developed Index, mentioned on page 1, tracks the performance of listed real estate companies and real estate investment trusts (REITs) worldwide, based in U.S. dollars.

The BofA Merrill Lynch U.S. High Yield Constrained Index, mentioned on page 1, tracks the performance of U.S. dollar-denominated high yield corporate debt publicly issued in the U.S. domestic market, but caps individual issuer exposure at 2% of the benchmark. Qualifying securities must have, among other things, a below-investment-grade rating (based on an average of Moody's, Standard & Poor's, and Fitch), an investment grade issuing country (based on an average of Moody's, Standard & Poor's, and Fitch foreign currency long-term sovereign debt ratings), and maturities of one year or more.

Market price is the price an investor would pay for shares of the Fund on the secondary market. NAV is the total value of one fund share, generally equal to a fund's net assets divided by the number of shares outstanding.

Past performance is not a guarantee of future results.

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Security type / sector and country allocations

**Delaware Enhanced Global Dividend and Income Fund**

As of November 30, 2014 (Unaudited)

Sector designations may be different than the sector designations presented in other fund materials. The sector designations may represent the investment manager's internal sector classifications, which may result in the sector designations for one fund being different than another fund's sector designations.

Security type / sector	Percentage of net assets
<b>Common Stock</b>	<b>70.09%</b>
Consumer Discretionary	7.89%
Consumer Staples	5.67%
Diversified REITs	1.02%
Energy	5.66%
Financials	9.30%
Healthcare	9.66%
Healthcare REITs	0.40%
Hotel REITs	0.79%
Industrial REITs	1.20%
Industrials	7.82%
Information Technology	7.17%
Mall REITs	0.93%
Manufactured Housing REITs	0.23%
Materials	3.33%
Mixed REITs	0.12%
Mortgage REITs	0.27%
Multifamily REITs	0.60%
Office REITs	0.59%
Self-Storage REIT	0.15%
Shopping Center REITs	1.14%
Single Tenant REITs	0.15%
Specialty REITs	0.58%
Telecommunications	4.01%
Utilities	1.41%
<b>Convertible Preferred Stock</b>	<b>4.06%</b>
<b>Exchange-Traded Note</b>	<b>0.08%</b>
<b>Agency Collateralized Mortgage Obligations</b>	<b>0.05%</b>
<b>Agency Mortgage-Backed Securities</b>	<b>0.45%</b>
<b>Commercial Mortgage-Backed Securities</b>	<b>0.08%</b>
<b>Convertible Bonds</b>	<b>12.73%</b>
Basic Industry	0.49%
Capital Goods	0.63%
Communications	1.45%

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Consumer Cyclical	1.15%
Consumer Non-Cyclical	2.22%
Energy	0.97%
Financials	1.37%
Real Estate Investment Trusts	1.37%
Technology	3.08%
Security type / sector	Percentage of net assets
<b>Corporate Bonds</b>	<b>45.72%</b>
Automotives	1.06%
Banking	4.55%
Basic Industry	4.24%
Brokerage	0.03%
Capital Goods	3.79%
Communications	5.14%
Consumer Cyclical	2.25%
Consumer Non-Cyclical	1.19%
Energy	7.03%
Financials	0.18%
Healthcare	2.73%
Healthcare REITs	0.00%
Insurance	1.02%
Media	4.95%
Real Estate Investment Trusts	0.07%
Services	2.38%
Technology	2.33%
Transportation	0.52%
Utilities	2.26%
<b>Non-Agency Asset-Backed Securities</b>	<b>0.04%</b>
<b>Non-Agency Collateralized Mortgage Obligations</b>	<b>0.08%</b>
<b>Senior Secured Loans</b>	<b>2.44%</b>
<b>Sovereign Bonds</b>	<b>2.82%</b>
<b>Supranational Bank</b>	<b>0.71%</b>
<b>U.S. Treasury Obligations</b>	<b>0.52%</b>
<b>Leveraged Non-Recourse Security</b>	<b>0.00%</b>
<b>Limited Partnership</b>	<b>0.18%</b>
<b>Preferred Stock</b>	<b>0.85%</b>
<b>Warrant</b>	<b>0.00%</b>
<b>Short-Term Investments</b>	<b>0.09%</b>
<b>Securities Lending Collateral</b>	<b>6.93%</b>
<b>Total Value of Securities</b>	<b>147.92%</b>
<b>Borrowing Under Line of Credit</b>	<b>(41.57%)</b>
<b>Obligation to Return Securities Lending Collateral</b>	<b>(6.93%)</b>
<b>Receivables and Other Assets Net of Liabilities</b>	<b>0.58%</b>
<b>Total Net Assets</b>	<b>100.00%</b>

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Country*	Percentage of net assets
Australia	2.12%
Austria	0.34%
Barbados	0.44%
Bermuda	0.78%
Brazil	1.00%
Canada	5.07%
Cayman Islands	0.01%
Chile	0.11%
China/Hong Kong	2.42%
Colombia	0.29%
Cyprus	0.24%
Denmark	0.86%
France	9.47%
Germany	2.55%
Indonesia	1.36%
Ireland	0.48%
Isle of Man	0.37%
Israel	1.98%
Italy	1.55%
Jamaica	0.94%
Japan	8.88%
Luxembourg	2.99%
Mexico	3.59%
Netherlands	3.05%
Norway	0.09%
Puerto Rico	0.31%
Russia	0.59%
Singapore	0.03%
South Africa	0.51%
Spain	0.27%
Sweden	2.45%
Switzerland	3.27%
United Kingdom	5.94%
United States	76.37%
Uruguay	0.18%
<b>Total</b>	<b>140.90%</b>

\* Allocation includes all investments except for short-term investments and securities lending collateral.

The percentage of net assets exceeds 100.00% because the Fund utilizes a line of credit with The Bank of New York Mellon, as described in Note 7 in Notes to financial statements. The Fund utilizes leveraging techniques in an attempt



to obtain a higher return for the Fund. There is no assurance that the Fund will achieve its investment objectives through the use of such techniques.

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

November 30, 2014

	<b>Number of shares</b>	<b>Value (U.S. \$)</b>
<b>Common Stock 70.09%</b>		
Consumer Discretionary 7.89%		
AMC Entertainment Holdings	7,023	\$ 184,143
Bayerische Motoren Werke *	7,712	882,533
Genuine Parts	8,400	863,352
Kering *	6,668	1,378,407
Mattel	26,700	842,385
Nitori Holdings	39,608	2,195,995
Publicis Groupe *	21,287	1,564,661
Sumitomo Rubber Industries	99,400	1,514,284
Target	11,800	873,200
Techtronic Industries	390,500	1,248,810
Toyota Motor	48,005	2,958,448
Yue Yuen Industrial Holdings	561,500	2,012,882
		16,519,100
Consumer Staples 5.67%		
Aryzta	33,137	2,645,881
Carlsberg Class B	19,975	1,780,023
Coca-Cola Amatil	157,865	1,228,329
ConAgra Foods	35,500	1,296,460
Kimberly-Clark	11,200	1,305,808
Kraft Foods Group	21,400	1,287,638
Lorillard	20,000	1,262,800
Safeway	30,500	1,062,620
		11,869,559
Diversified REITs 1.02%		
Champion REIT	125,000	57,867
Dexus Property Group	6,652	40,261
Fibra Uno Administracion	87,563	289,732
Gramercy Property Trust	25,741	151,872
Investors Real Estate Trust	10,260	83,722

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Kenedix Office Investment *	50	275,952
Lexington Realty Trust	29,584	325,424
Mapletree Logistics Trust	70,996	64,279
Nieuwe Steen Investments	89	412
Orix J-REIT	40	55,544
Stockland	70,059	245,722
Vornado Realty Trust	2,641	294,630
Washington Real Estate Investment Trust	9,471	254,486
		2,139,903

Energy 5.66%

Chevron	7,100	772,977
CNOOC	1,054,000	1,541,266
ConocoPhillips	11,300	746,591
Marathon Oil	18,500	535,020
Occidental Petroleum	7,200	574,344
Royal Dutch Shell ADR *	17,000	1,180,480
Saipem	72,883	1,044,032

**Value**  
**Number**  
**of shares**      **(U.S. \$)**

**Common Stock** (continued)

Energy (continued)

Spectra Energy	21,500	\$ 814,420
Subsea 7 *	16,338	162,367
Suncor Energy	38,100	1,202,930
Total	26,586	1,488,611
Total ADR	21,500	1,196,045
Williams	11,400	589,950
		11,849,033

Financials 9.30%

Ashford *	710	84,353
AXA	130,188	3,145,725
Bank Rakyat Indonesia Persero	1,297,000	1,224,838
BB&T	34,100	1,281,819
Fifth Street Finance	16,638	147,579
Gallagher (Arthur J.)	26,400	1,265,880
ING Groep CVA	138,098	2,024,627
Mitsubishi UFJ Financial Group	518,828	3,000,704
Nordea Bank	195,801	2,445,937
Nordea Bank FDR *	46,352	581,489
Solar Capital	8,309	152,719
Standard Chartered	162,021	2,374,771
UniCredit	233,816	1,729,969

19,460,410

Healthcare	9.66%		
AbbVie		12,900	892,680
AstraZeneca ADR		11,300	838,121
Baxter International		13,200	963,600
Bristol-Myers Squibb		10,800	637,740
Halyard Health		1	20
Johnson & Johnson		9,700	1,050,025
Merck		24,800	1,497,920
Novartis		38,942	3,770,792
Pfizer		48,360	1,506,414
Quest Diagnostics		9,800	640,038
Sanofi *		30,832	2,987,641
Stada Arzneimittel		36,046	1,299,176
Teva Pharmaceutical Industries ADR		72,700	4,142,446
			20,226,613
Healthcare REITs	0.40%		
Health Care REIT		932	68,651
Healthcare Realty Trust		4,027	106,353
Healthcare Trust of America Class A		21,431	273,460
Ventas		5,342	382,220
			830,684

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	<b>Number of shares</b>	<b>Value (U.S. \$)</b>
<b>Common Stock (continued)</b>		
Hotel REITs 0.79%		
Ashford Hospitality Prime	12,360	\$ 216,918
Ashford Hospitality Trust	61,800	647,664
DiamondRock Hospitality	20,217	301,840
Pebblebrook Hotel Trust	2,806	121,135
Strategic Hotels & Resorts	19,000	252,320
Summit Hotel Properties	9,300	107,880
		1,647,757
Industrial REITs 1.20%		
DCT Industrial Trust	4,219	144,003
First Industrial Realty Trust	28,050	556,793
Goodman Group	49,447	229,414
Prologis	385	16,278
Prologis Property Mexico	294,100	625,372
STAG Industrial	35,063	835,902
Terreno Realty	5,097	106,069
		2,513,831
Industrials 7.82%		
Deutsche Post	66,924	2,225,099
East Japan Railway	26,161	1,961,193
ITOCHU	199,502	2,296,257
Koninklijke Philips *	68,596	2,070,677
Meggitt	169,986	1,337,352
Raytheon	12,000	1,280,400
Rexel *	51,167	948,194
Vinci *	34,617	1,873,015
Waste Management	26,100	1,271,853
WestJet Airlines @	38,643	1,091,343
		16,355,383
Information Technology 7.17%		
CA	41,900	1,305,185

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Canon ADR	27,100	864,761
CGI Group Class A	109,640	3,995,624
Cisco Systems	54,900	1,517,436
Intel	41,000	1,527,250
Microsoft	23,800	1,137,878
Playtech	76,448	767,654
Symantec	41,400	1,080,126
Teleperformance *	40,073	2,800,361
		14,996,275

Mall REITs 0.93%		
CBL & Associates Properties	7,338	142,724
General Growth Properties	12,497	334,420
Pennsylvania Real Estate		
Investment Trust	8,500	198,645
Rouse Properties *	748	13,681
	<b>Number of</b>	<b>Value</b>
	<b>shares</b>	<b>(U.S. \$)</b>

**Common Stock** (continued)

Mall REITs (continued)		
Simon Property Group	6,908	\$ 1,248,966
		1,938,436

Manufactured Housing REITs 0.23%		
Equity Lifestyle Properties	3,156	156,569
Sun Communities	5,456	321,304
		477,873

Materials 3.33%		
AuRico Gold	152,573	510,933
Dow Chemical	14,400	700,848
duPont (E.I.) deNemours	10,200	728,280
Lafarge *	22,207	1,580,325
Rexam	206,547	1,461,524
Rio Tinto	31,263	1,463,286
Tarkett	6,400	163,046
Yamana Gold	102,366	369,652
		6,977,894

Mixed REITs 0.12%		
Duke Realty	11,447	222,530
PS Business Parks	400	32,556
		255,086

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<b>Mortgage REITs 0.27%</b>		
Chimera Investment	17,000	57,460
Starwood Property Trust	20,900	502,854
		560,314
<b>Multifamily REITs 0.60%</b>		
American Residential Properties	5,720	101,644
Apartment Investment & Management	15,728	585,868
Camden Property Trust	5,109	391,758
Equity Residential	1,597	113,131
Essex Property Trust	297	60,116
		1,252,517
<b>Office REITs 0.59%</b>		
alstria office REIT *	33,657	422,020
Equity Commonwealth	8,051	204,737
Link REIT	33,000	210,215
Parkway Properties	20,673	402,710
		1,239,682
<b>Self-Storage REIT 0.15%</b>		
Extra Space Storage	5,300	314,131
		314,131
<b>Shopping Center REITs 1.14%</b>		
Agree Realty	12,473	384,293

(continues)

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Number of shares</b>	<b>Value (U.S. \$)</b>
<b>Common Stock</b> (continued)		
Shopping Center REITs (continued)		
Charter Hall Retail REIT	71,117	\$ 251,249
DDR	9,078	166,400
First Capital Realty	2,922	47,827
Kimco Realty	12,857	327,211
Kite Realty Group Trust	5,922	161,552
Ramco-Gershenson Properties Trust	19,634	351,449
Regency Centers	900	55,332
Scentre Group	40,548	119,779
Unibail-Rodamco	910	240,665
Westfield	16,989	119,896
Wheeler Real Estate Investment Trust *@	36,463	154,603
		2,380,256
Single Tenant REITs 0.15%		
National Retail Properties	2,759	106,304
Spirit Realty Capital	18,362	215,019
		321,323
Specialty REITs 0.58%		
EPR Properties	11,976	670,536
Nippon Prologis REIT	250	544,953
		1,215,489
Telecommunications 4.01%		
AT&T *	41,900	1,482,422
Century Communications =	125,000	0
Mobile Telesystems ADR	101,500	1,240,330
Nippon Telegraph & Telephone	42,901	2,295,789
NTT DOCOMO ADR	39,900	622,839



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Tele2 Class B	146,655	1,898,876
Verizon Communications	16,800	849,912
		8,390,168

Utilities 1.41%

Abengoa Yield	3,271	92,242
American Water Works	800	42,440
Edison International	10,100	641,956
National Grid	78,225	1,137,871
National Grid ADR *	11,400	827,640
NorthWestern *	3,800	202,274

2,944,423

**Total Common Stock**

(cost \$125,463,282)

**146,676,140**

**Number of  
shares      Value  
(U.S. \$)**

**Convertible Preferred Stock 4.06%**

ArcelorMittal 6.00% exercise price \$20.36, expiration date 12/21/15	24,100	476,351
Chesapeake Energy 144A 5.75% exercise price \$26.14, expiration date 12/31/49 #	240	255,450
Dynegy 5.375% exercise price \$38.75, expiration date 11/1/17 @	5,560	597,922
El Paso Energy Capital Trust I 4.75% exercise price \$34.49, expiration date 3/31/28	1,950	117,000
Exelon 6.50% exercise price \$43.75, expiration date 6/1/17	14,200	741,098
Halcon Resources 5.75% exercise price \$6.16, expiration date 12/31/49	397	207,780
HealthSouth 6.50% exercise price \$29.70, expiration date 12/31/49	756	1,077,961
Huntington Bancshares 8.50% exercise price \$11.95, expiration date 12/31/49	510	683,400
Intelsat 5.75% exercise price \$22.05, expiration date 5/1/16	17,884	850,116
Laclede Group 6.75% exercise price \$57.81, expiration date 4/1/17	4,379	243,166
Maiden Holdings 7.25% exercise price \$15.39, expiration date 9/15/16	19,850	982,575
SandRidge Energy		
7.00% exercise price \$7.76, expiration date 12/31/49	800	55,450
8.50% exercise price \$8.01, expiration date 12/31/49	5,955	419,828
Wells Fargo 7.50% exercise price \$156.71, expiration date 12/31/49	695	853,130
Weyerhaeuser 6.375% exercise price \$33.13, expiration date 7/1/16	11,489	674,404

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	Number of shares	Value (U.S. \$)
<b>Convertible Preferred Stock (continued)</b>		
Wheeler Real Estate Investment Trust		
9.00% exercise price \$5.00, expiration date 12/31/49	10,450	\$ 238,156
9.00% exercise price \$5.00, expiration date 12/31/49 @=	34	35,473
<b>Total Convertible Preferred Stock</b> (cost \$8,471,285)		<b>8,509,260</b>
<b>Exchange-Traded Note 0.08%</b>		
iPATH S&P 500 VIX Short-Term Futures *	6,250	171,187
<b>Total Exchange-Traded Note</b> (cost \$1,178,000)		<b>171,187</b>
	<b>Principal amount<sup>o</sup></b>	
<b>Agency Collateralized Mortgage Obligations 0.05%</b>		
Fannie Mae REMICs Series 2001-50 BA		
7.00% 10/25/41	71,495	81,935
Freddie Mac REMICs Series 2557 WE		
5.00% 1/15/18	20,511	21,510
<b>Total Agency Collateralized Mortgage Obligations</b> (cost \$93,415)		<b>103,445</b>
<b>Agency Mortgage-Backed Securities 0.45%</b>		
Fannie Mae ARM		

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2.09% 3/1/38	8,272	8,814
2.127% 10/1/36	5,711	6,101
2.238% 4/1/36	20,599	22,225
2.298% 10/1/36	8,627	9,190
2.319% 4/1/36	6,540	6,974
2.324% 11/1/35	4,585	4,915
2.421% 5/1/43	4,466	4,486
2.546% 6/1/43	1,995	2,019
3.302% 9/1/43	5,174	5,389
Fannie Mae S.F. 15 yr		
4.00% 11/1/25	83,317	89,521
5.50% 1/1/23	11,613	12,748
Fannie Mae S.F. 20 yr		
4.00% 2/1/31	3,364	3,630
5.50% 12/1/29	791	886
Fannie Mae S.F. 30 yr		
4.00% 11/1/40	1,730	1,851
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>

**Agency Mortgage-Backed Securities (continued)**

Fannie Mae S.F. 30 yr		
4.50% 7/1/36	1,523	\$ 1,657
6.50% 6/1/36	10,572	12,723
6.50% 10/1/36	8,104	9,219
Fannie Mae S.F. 30 yr TBA		
3.00% 12/1/44	20,000	20,216
Freddie Mac ARM		
2.249% 7/1/36	5,345	5,747
2.265% 10/1/36	9,417	10,021
Freddie Mac S.F. 15 yr		
4.00% 5/1/25	727	777
5.00% 6/1/18	3,852	4,068
5.00% 12/1/22	21,492	23,101
Freddie Mac S.F. 30 yr		
5.00% 1/1/34	223,783	248,564
6.00% 2/1/36	1,050	1,201
7.00% 11/1/33	20,464	24,608
9.00% 9/1/30	36,668	39,832
FREMF Mortgage Trust		
Series 2011-K10 B 144A		
4.774% 11/25/49 #	10,000	10,787
Series 2012-K22 B 144A		
3.812% 8/25/45 #	10,000	10,108
Series 2013-K712 B 144A		
3.484% 5/25/45 #	20,000	20,247
GNMA I S.F. 30 yr		
7.50% 12/15/23	43,887	50,834
7.50% 1/15/32	38,196	46,594
9.50% 9/15/17	24,458	25,579

12.00% 5/15/15	645	649
GNMA II S.F. 30 yr		
6.00% 11/20/28	41,372	46,916
6.50% 2/20/30	131,811	146,689
<b>Total Agency Mortgage-Backed Securities</b> (cost \$857,727)		<b>938,886</b>

**Commercial Mortgage-Backed Securities 0.08%**

Bank of America Commercial Mortgage Trust		
Series 2006-1 AM		
5.421% 9/10/45	10,000	10,435
Series 2007-4 AM		
6.014% 2/10/51	35,000	38,412
Citigroup Commercial Mortgage Trust		
Series 2014-GC25 A4		
3.635% 10/10/47	10,000	10,394

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**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Commercial Mortgage-Backed Securities (continued)</b>		
Goldman Sachs Mortgage Securities II Series 2005-GG4 A4A 4.751% 7/10/39	20,623	\$ 20,680
Goldman Sachs Mortgage Securities Trust Series 2006-GG6 A4 5.553% 4/10/38	10,000	10,328
JPMBB Commercial Mortgage Securities Trust Series 2014-C21 AS 3.997% 8/15/47	10,000	10,469
JPMorgan Chase Commercial Mortgage Securities Trust Series 2006-LDP8 AM 5.44% 5/15/45	35,000	37,261
Lehman Brothers-UBS Commercial Mortgage Trust Series 2006-C6 AJ 5.452% 9/15/39	10,000	10,509
Series 2006-C6 AM 5.413% 9/15/39	20,000	21,364
<b>Total Commercial Mortgage-Backed Securities (cost \$168,893)</b>		<b>169,852</b>

**Convertible Bonds 12.73%**

<b>Basic Industry 0.49%</b>		
Peabody Energy 4.75% exercise price \$57.62, expiration date 12/15/41 *	391,000	240,221
RTI International Metals 1.625% exercise price \$40.72, expiration date 10/10/19 *	831,000	793,086
		1,033,307
<b>Capital Goods 0.63%</b>		
General Cable 4.50% exercise price \$34.88, expiration date 11/15/29 f	924,000	628,897
Titan Machinery 3.75% exercise price \$43.17, expiration date 4/30/19 *	897,000	690,129

1,319,026

Communications 1.45%		
Alaska Communications Systems Group 6.25% exercise price \$10.28, expiration date 4/27/18	672,000	566,160
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>

**Convertible Bonds (continued)**

Communications (continued)		
Clearwire Communications 144A 8.25% exercise price \$7.08, expiration date 11/30/40 #	562,000	\$ 621,010
Liberty Interactive		
0.75% exercise price \$1,000.00, expiration date 3/30/43	544,000	767,720
144A 1.00% exercise price \$74.31, expiration date 9/28/43 #	975,000	1,073,719
		3,028,609

Consumer Cyclical 1.15%		
Huron Consulting Group 144A 1.25% exercise price \$79.89, expiration date 9/27/19 #	565,000	588,659
Iconix Brand Group 2.50% exercise price \$30.75, expiration date 5/31/16	436,000	592,687
Meritor 4.00% exercise price \$26.73, expiration date 2/12/27 *f	1,149,000	1,225,839
		2,407,185

Consumer Non-Cyclical 2.22%		
BioMarin Pharmaceutical 1.50% exercise price \$94.15, expiration date 10/13/20 *	343,000	422,319
Hologic		
2.00% exercise price \$31.17, expiration date 2/27/42 f	597,000	664,536
2.00% exercise price \$38.59, expiration date 12/15/43	607,000	669,976
NuVasive 2.75% exercise price \$42.13, expiration date 6/30/17	1,077,000	1,323,364
Spectrum Pharmaceuticals 144A 2.75% exercise price \$10.53, expiration date 12/13/18 #	522,000	509,276

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	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Convertible Bonds (continued)</b>		
Consumer Non-Cyclical (continued)		
Vector Group		
1.75% exercise price \$25.87, expiration date 4/15/20	634,000	\$ 676,399
2.50% exercise price \$16.78, expiration date 1/14/19	263,000	373,198
		4,639,068
Energy 0.97%		
Chesapeake Energy 2.50% exercise price \$47.77, expiration date 5/15/37	349,000	344,201
Energy XXI 144A 3.00% exercise price \$40.40, expiration date 12/13/18 #*	980,000	641,900
Helix Energy Solutions Group 3.25% exercise price \$25.02, expiration date 3/12/32	378,000	445,567
Vantage Drilling 144A 5.50% exercise price \$2.39, expiration date 7/15/43 #	654,000	587,374
		2,019,042
Financials 1.37%		
Ares Capital 5.75% exercise price \$19.13, expiration date 2/1/16 *	588,000	612,255
BGC Partners 4.50% exercise price \$9.84, expiration date 7/13/16	791,000	847,853
Gain Capital Holdings 4.125% exercise price \$12.00, expiration date 11/30/18	689,000	720,436
New Mountain Finance 144A 5.00% exercise price \$15.93, expiration date 6/14/19 #	666,000	685,147
		2,865,691
Real Estate Investment Trusts 1.37%		
Blackstone Mortgage Trust 5.25% exercise price \$28.66, expiration date 12/1/18	970,000	1,014,256
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Convertible Bonds (continued)</b>		
Real Estate Investment Trusts (continued)		
Campus Crest Communities Operating Partnership 144A 4.75% exercise price \$12.56, expiration date 10/11/18 #	663,000	\$ 633,994
Forest City Enterprises 3.625% exercise price \$24.21, expiration date 8/14/20	591,000	634,586
Lexington Realty Trust 144A 6.00% exercise price \$6.68, expiration date 1/11/30 #	363,000	589,648
		2,872,484

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Technology	3.08%		
Blucora	4.25% exercise price \$21.66, expiration date 3/29/19	416,000	405,340
Cardtronics	1.00% exercise price \$52.35, expiration date 11/27/20 *	1,096,000	1,093,265
Ciena 144A	3.75% exercise price \$20.17, expiration date 10/15/18 #	683,000	790,146
Electronics For Imaging 144A	0.75% exercise price \$52.72, expiration date 8/29/19 #	380,000	396,150
Intel	3.25% exercise price \$21.71, expiration date 8/1/39	401,000	721,050
j2 Global	3.25% exercise price \$69.37, expiration date 6/14/29	789,000	826,971
Nuance Communications	2.75% exercise price \$32.30, expiration date 11/1/31	712,000	701,765
SanDisk	1.50% exercise price \$51.36, expiration date 8/11/17	370,000	752,256
VeriSign	4.086% exercise price \$34.37, expiration date 8/15/37	424,000	765,055
			6,451,998
<b>Total Convertible Bonds</b>			
(cost \$24,977,821)			<b>26,636,410</b>

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds 45.72%</b>		
Automotives 1.06%		
Gates Global 144A		
6.00% 7/15/22 #*	695,000	\$ 679,363
General Motors		
4.875% 10/2/23	190,000	202,350
6.25% 10/2/43	235,000	274,363
International Automotive Components Group 144A		
9.125% 6/1/18 #	450,000	478,125
Meritor		
6.25% 2/15/24	135,000	139,050
6.75% 6/15/21	225,000	237,375
Tupy Overseas 144A		
6.625% 7/17/24 #	200,000	201,000
		2,211,626
<b>Banking 4.55%</b>		
Australia & New Zealand Banking Group		
5.412% 6/20/22	AUD 1,799,000	1,599,243
Banco Santander Mexico 144A 5.95% 1/30/24 #	200,000	211,500
Bank of America		
4.145% 8/23/18	AUD 1,100,000	951,068
4.25% 10/22/26	30,000	30,225
6.50% 10/29/49	485,000	500,156
Barclays Bank		
7.625% 11/21/22	375,000	414,609
City National		
5.25% 9/15/20 *	5,000	5,629
Credit Suisse Group 144A		
7.50% 12/29/49 #*	400,000	424,000
Goldman Sachs Group		
4.035% 8/21/19	AUD 1,190,000	1,023,644
4.468% 8/8/18	AUD 1,280,000	1,117,664
6.15% 4/1/18	20,000	22,661
HSBC Holdings		
4.00% 3/30/22	20,000	21,430
6.375% 12/29/49 *	415,000	425,064

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JPMorgan Chase		
3.825% 5/17/18	AUD 1,100,000	944,479
3.875% 9/10/24	15,000	15,174
6.75% 1/29/49	430,000	460,100
Lloyds Banking Group		
7.50% 4/30/49 *	445,000	458,350
Morgan Stanley		
4.35% 9/8/26	10,000	10,153
Northern Trust		
3.95% 10/30/25	30,000	31,496
PNC Funding 5.625% 2/1/17	35,000	38,064
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>

**Corporate Bonds** (continued)

Banking (continued)

Popular 7.00% 7/1/19 *	650,000	\$ 656,500
Santander Holdings USA		
4.625% 4/19/16	10,000	10,482
State Street 3.10% 5/15/23	10,000	9,836
SunTrust Bank		
2.35% 11/1/18	10,000	10,110
SVB Financial Group		
5.375% 9/15/20	25,000	28,412
USB Capital IX		
3.50% 10/29/49	80,000	65,200
Wells Fargo		
4.10% 6/3/26	20,000	20,529
4.65% 11/4/44	10,000	10,206
Zions Bancorp		
4.50% 6/13/23	5,000	5,283
		9,521,267

Basic Industry 4.24%

AK Steel		
7.625% 5/15/20 *	421,000	402,055
7.625% 10/1/21	205,000	193,725
ArcelorMittal		
6.125% 6/1/18	340,000	361,250
10.35% 6/1/19	15,000	18,319
Arch Coal 144A		
8.00% 1/15/19 #*	365,000	250,025
Builders FirstSource 144A		
7.625% 6/1/21 #	480,000	498,000
Celanese U.S. Holdings		
4.625% 11/15/22	5,000	5,037
CF Industries		
5.15% 3/15/34	5,000	5,333
5.375% 3/15/44	5,000	5,455

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6.875% 5/1/18	25,000	28,813
CPG Merger Sub 144A		
8.00% 10/1/21 #*	380,000	400,900
Dow Chemical		
3.50% 10/1/24 *	5,000	4,994
8.55% 5/15/19	34,000	42,879
Eastman Chemical		
2.70% 1/15/20	5,000	5,060
First Quantum Minerals		
144A 6.75% 2/15/20 #	172,000	165,980
144A 7.00% 2/15/21 #	172,000	167,700
144A 7.25% 5/15/22 #	200,000	193,500
FMG Resources August 2006 144A		
6.875% 4/1/22 #*	650,000	584,187
Freeport-McMoRan		
4.00% 11/14/21	5,000	5,081

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	Principal amount <sup>o</sup>	Value (U.S. \$)
<b>Corporate Bonds (continued)</b>		
Basic Industry (continued)		
Freeport-McMoRan		
4.55% 11/14/24	10,000	\$ 10,067
Georgia-Pacific		
8.00% 1/15/24	20,000	26,715
Grace (W.R.)		
144A 5.125% 10/1/21 #	165,000	171,600
144A 5.625% 10/1/24 #	165,000	174,900
Hardwoods Acquisition 144A		
7.50% 8/1/21 #	280,000	282,800
HD Supply 11.50% 7/15/20	345,000	401,494
International Paper		
6.00% 11/15/41	5,000	5,742
INVISTA Finance 144A		
4.25% 10/15/19 #	10,000	10,025
JMC Steel Group 144A		
8.25% 3/15/18 #*	300,000	301,875
Kissner Milling 144A		
7.25% 6/1/19 #	320,000	327,200
LSB Industries		
7.75% 8/1/19	295,000	314,175
Lundin Mining 144A		
7.875% 11/1/22 #*	430,000	445,050
Methanex 4.25% 12/1/24	5,000	5,086
Monsanto 4.40% 7/15/44	20,000	20,587
Mosaic 5.625% 11/15/43	15,000	17,095
New Gold 144A		
6.25% 11/15/22 #	380,000	370,500
Nortek 8.50% 4/15/21	265,000	286,200
NOVA Chemicals 144A		
5.00% 5/1/25 #	240,000	248,700
Polymer Group 144A		
6.875% 6/1/19 #	500,000	490,625
PPG Industries		
2.30% 11/15/19	5,000	5,021
Rock-Tenn 3.50% 3/1/20	10,000	10,237
Rockwood Specialties Group		
4.625% 10/15/20	5,000	5,244
Ryerson		

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9.00% 10/15/17	245,000	250,513
11.25% 10/15/18	69,000	73,485
Sealed Air 144A		
5.125% 12/1/24 #	125,000	125,625
Steel Dynamics 144A		
5.50% 10/1/24 #	260,000	273,650
TPC Group 144A		
8.75% 12/15/20 #	525,000	547,313
Weyerhaeuser		
4.625% 9/15/23	10,000	10,782
Wise Metals Group 144A		
8.75% 12/15/18 #	170,000	182,750

**Principal  
amount<sup>o</sup>**      **Value  
(U.S. \$)**

**Corporate Bonds** (continued)

Basic Industry (continued)

Wise Metals Intermediate Holdings 144A		
9.75% 6/15/19 #	115,000	\$ 124,919
Yamana Gold		
4.95% 7/15/24	5,000	4,862
		8,863,130

Brokerage 0.03%

Jefferies Group		
5.125% 1/20/23	10,000	10,760
6.45% 6/8/27	5,000	5,690
6.50% 1/20/43	5,000	5,607
Lazard Group		
6.85% 6/15/17	34,000	38,245
		60,302

Capital Goods 3.79%

Accudyne Industries 144A		
7.75% 12/15/20 #	440,000	446,600
Ardagh Packaging Finance 144A		
6.00% 6/30/21 #*	400,000	397,000
BWAY Holding 144A		
9.125% 8/15/21 #	705,000	729,675
Cemex		
144A 5.70% 1/11/25 #	1,000,000	967,500
144A 7.25% 1/15/21 #	480,000	508,800
Consolidated Container 144A		
10.125% 7/15/20 #	385,000	352,275
Crane 4.45% 12/15/23	10,000	10,598
Gardner Denver 144A		
6.875% 8/15/21 #*	509,000	507,727

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Ingersoll-Rand Global Holding 4.25% 6/15/23	15,000	15,814
KLX 144A 5.875% 12/1/22 #	410,000	418,200
Milacron 144A 7.75% 2/15/21 #	375,000	392,813
Owens-Brockway Glass Container 144A 5.00% 1/15/22 #	125,000	126,719
144A 5.375% 1/15/25 #	80,000	81,100
Parker-Hannifin 3.30% 11/21/24	5,000	5,093
Plastipak Holdings 144A 6.50% 10/1/21 #	300,000	303,000
Reynolds Group Issuer 8.25% 2/15/21	310,000	325,113
Signode Industrial Group 144A 6.375% 5/1/22 #	360,000	353,700
Textron 3.875% 3/1/25	5,000	5,048

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
<b>Capital Goods (continued)</b>		
TransDigm		
6.00% 7/15/22	450,000	\$ 456,750
6.50% 7/15/24	370,000	379,250
Votorantim Cimentos 144A		
7.25% 4/5/41 #	1,118,000	1,151,540
		7,934,315
<b>Communications 5.14%</b>		
American Tower Trust I		
144A 1.551% 3/15/43 #	5,000	4,985
144A 3.07% 3/15/23 #	20,000	20,106
CC Holdings GS V		
3.849% 4/15/23	5,000	4,993
CenturyLink		
5.80% 3/15/22	210,000	221,550
6.75% 12/1/23 *	240,000	267,300
Cogent Communications Finance 144A		
5.625% 4/15/21 #	375,000	369,375
Comcast 3.375% 2/15/25	25,000	25,500
Crown Castle Towers 144A		
4.883% 8/15/20 #	30,000	33,392
Digicel Group		
144A 7.125% 4/1/22 #	1,250,000	1,225,000
144A 8.25% 9/30/20 #	730,000	751,900
DIRECTV Holdings		
4.45% 4/1/24	25,000	26,368
Equinix		
5.375% 1/1/22	155,000	156,550
5.75% 1/1/25	270,000	273,375
Historic TW 6.875% 6/15/18	25,000	29,113
Hughes Satellite Systems		
7.625% 6/15/21	280,000	312,200
Intelsat Luxembourg		
7.75% 6/1/21 *	110,000	114,400

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8.125% 6/1/23 *	1,395,000	1,464,750
Level 3 Communications 144A		
5.75% 12/1/22 #	385,000	388,850
Level 3 Escrow II 144A		
5.375% 8/15/22 #	460,000	465,750
Omnicom Group		
3.65% 11/1/24	20,000	20,132
Orange 5.50% 2/6/44	5,000	5,715
SES 144A 3.60% 4/4/23 #	15,000	15,494
SES Global Americas Holdings 144A		
5.30% 3/25/44 #	15,000	16,516
Sprint		
7.125% 6/15/24	1,015,000	1,008,656
	<b>Principal</b>	<b>Value</b>
	<b>amount<sup>o</sup></b>	<b>(U.S. \$)</b>

**Corporate Bonds** (continued)

Communications (continued)		
Sprint		
7.25% 9/15/21	435,000	\$ 445,875
7.875% 9/15/23	260,000	273,650
Sprint Capital 6.90% 5/1/19	85,000	88,188
Time Warner Cable		
4.00% 9/1/21	10,000	10,676
8.25% 4/1/19	15,000	18,567
T-Mobile USA		
6.00% 3/1/23	155,000	157,713
6.125% 1/15/22	115,000	117,444
6.25% 4/1/21	180,000	185,175
6.375% 3/1/25	275,000	279,813
Verizon Communications		
3.00% 11/1/21	25,000	25,113
4.40% 11/1/34	10,000	9,965
5.15% 9/15/23	15,000	16,875
Viacom		
3.25% 3/15/23	15,000	14,675
3.875% 4/1/24	5,000	5,067
VimpelCom Holdings 144A		
5.95% 2/13/23 #	500,000	421,500
Wind Acquisition Finance		
144A 4.75% 7/15/20 #	200,000	193,000
144A 7.375% 4/23/21 #	365,000	352,225
Windstream		
7.50% 6/1/22 *	5,000	5,156
7.50% 4/1/23	235,000	240,288
7.75% 10/1/21	235,000	247,044
WPP Finance 2010		
5.625% 11/15/43	5,000	5,605
Zayo Group 10.125% 7/1/20	372,000	419,895



10,755,479

Consumer Cyclical	2.25%		
Bed Bath & Beyond			
4.915% 8/1/34		5,000	5,113
5.165% 8/1/44		10,000	10,199
CDK Global 144A			
4.50% 10/15/24 #		10,000	9,997
DBP Holding 144A			
7.75% 10/15/20 #		251,000	227,155
Delphi 4.15% 3/15/24		5,000	5,199
Expedia 4.50% 8/15/24		5,000	5,091
General Motors			
3.50% 10/2/18		10,000	10,300
5.00% 4/1/35		5,000	5,066
General Motors Financial			
4.375% 9/25/21		5,000	5,187

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	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Consumer Cyclical (continued)		
Host Hotels & Resorts 4.75% 3/1/23	20,000	\$ 21,301
Hyundai Capital America 144A 2.55% 2/6/19 #	10,000	10,087
International Game Technology 5.35% 10/15/23	10,000	10,293
K. Hovnanian Enterprises 144A 8.00% 11/1/19 #	230,000	231,150
Landry's 144A 9.375% 5/1/20 #	785,000	838,969
Lear 5.25% 1/15/25	260,000	261,300
Magna International 3.625% 6/15/24	30,000	30,192
Marriott International 3.375% 10/15/20	5,000	5,200
Men's Wearhouse 144A 7.00% 7/1/22 #*	215,000	221,987
MGM Resorts International 6.00% 3/15/23	415,000	423,300
Michaels Stores 144A 5.875% 12/15/20 #	300,000	303,750
Midas Intermediate Holdco II 144A 7.875% 10/1/22 #	285,000	283,575
Pantry 8.375% 8/1/20	405,000	429,300
Party City Holdings 8.875% 8/1/20 *	435,000	470,887
PC Nextco Holdings 8.75% 8/15/19	225,000	229,500
PF Chang's China Bistro 144A 10.25% 6/30/20 #*	265,000	268,313
QVC		
4.375% 3/15/23	15,000	14,975
144A 5.45% 8/15/34 #	10,000	9,713
Rite Aid 6.75% 6/15/21	275,000	289,438
Signet UK Finance 4.70% 6/15/24	10,000	10,209
Starwood Hotels & Resorts Worldwide 3.75% 3/15/25	5,000	5,055
4.50% 10/1/34	5,000	5,000
Target 2.30% 6/26/19 *	5,000	5,059

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TRW Automotive 144A 4.45% 12/1/23 #	15,000	15,113
Walgreens Boots Alliance 3.80% 11/18/24	10,000	10,233
Wyndham Worldwide 4.25% 3/1/22	5,000	5,119
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>

**Corporate Bonds (continued)**

Consumer Cyclical (continued)

Wyndham Worldwide 5.625% 3/1/21	10,000	\$ 11,165
		4,703,490

Consumer Non-Cyclical 1.19%

Boston Scientific 6.00% 1/15/20	15,000	17,145
CareFusion 6.375% 8/1/19	10,000	11,591
Celgene 3.95% 10/15/20	30,000	32,010
Covidien International Finance 4.20% 6/15/20	20,000	21,729
Crestview DS Merger Sub II 10.00% 9/1/21	255,000	302,175
Darling Ingredients 5.375% 1/15/22	145,000	146,994
ESAL 144A 6.25% 2/5/23 #	200,000	201,750
Express Scripts Holding 2.25% 6/15/19	5,000	4,999
3.50% 6/15/24	15,000	14,983
Gilead Sciences 3.50% 2/1/25	5,000	5,161
3.70% 4/1/24	10,000	10,456
JBS Investments 144A 7.75% 10/28/20 #	470,000	512,300
McKesson 3.796% 3/15/24	30,000	30,755
Omnicare 4.75% 12/1/22 *	85,000	86,700
5.00% 12/1/24 *	230,000	235,750
Prestige Brands 144A 5.375% 12/15/21 #	290,000	287,100
Quest Diagnostics 2.70% 4/1/19	20,000	20,272
Spectrum Brands 6.375% 11/15/20	75,000	79,688
6.625% 11/15/22	280,000	299,600
SUPERVALU 7.75% 11/15/22	80,000	79,800
Sysco		

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3.50% 10/2/24	5,000	5,144
4.35% 10/2/34	5,000	5,287
Thermo Fisher Scientific		
2.40% 2/1/19	10,000	10,063
4.15% 2/1/24	20,000	21,141
Zimmer Holdings		
4.625% 11/30/19	30,000	33,046
Zoetis 3.25% 2/1/23	20,000	19,565
		2,495,204
Energy 7.03%		
Anadarko Petroleum		
3.45% 7/15/24 *	5,000	4,912

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**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Energy (continued)		
Baytex Energy		
144A 5.125% 6/1/21 #	80,000	\$ 74,000
144A 5.625% 6/1/24 #	360,000	323,550
California Resources		
144A 5.50% 9/15/21 #	460,000	415,150
144A 6.00% 11/15/24 #*	430,000	385,656
Calumet Specialty Products Partners		
7.625% 1/15/22	570,000	581,400
Canadian Natural Resources		
3.90% 2/1/25	5,000	5,097
Chaparral Energy		
7.625% 11/15/22	265,000	243,800
8.25% 9/1/21	160,000	154,400
CHC Helicopter		
9.375% 6/1/21 *	247,000	251,940
Chesapeake Energy		
4.875% 4/15/22	710,000	706,450
Cimarex Energy		
4.375% 6/1/24	5,000	4,950
Compressco Partners 144A		
7.25% 8/15/22 #	450,000	414,000
ConocoPhillips		
3.35% 11/15/24	5,000	5,079
4.30% 11/15/44	5,000	5,158
Consolidated Energy Finance 144A		
6.75% 10/15/19 #	570,000	572,850
Continental Resources		
4.50% 4/15/23	20,000	20,431
Dominion Gas Holdings		
3.55% 11/1/23	5,000	5,183
Ecopetrol 5.875% 5/28/45	615,000	611,925
El Paso Pipeline Partners Operating		
4.30% 5/1/24	15,000	15,071
Enbridge Energy Partners		
8.05% 10/1/37	25,000	27,875
	178,000	189,570

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Energy Transfer Equity		
5.875% 1/15/24		
Energy Transfer Partners		
5.15% 2/1/43	10,000	9,935
5.95% 10/1/43 *	5,000	5,447
9.70% 3/15/19	7,000	8,941
Energy XXI Gulf Coast 144A		
6.875% 3/15/24 #	390,000	293,475
EnLink Midstream Partners		
5.05% 4/1/45	5,000	5,063
Enterprise Products Operating		
5.10% 2/15/45	5,000	5,412
7.034% 1/15/68	25,000	27,832
	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>

**Corporate Bonds** (continued)

Energy (continued)		
Exterran Partners		
6.00% 4/1/21	395,000	\$ 359,450
FTS International 144A		
6.25% 5/1/22 #	245,000	203,350
Genesis Energy		
5.75% 2/15/21	440,000	436,150
Halcon Resources		
8.875% 5/15/21 *	235,000	182,125
9.75% 7/15/20	655,000	504,350
Key Energy Services		
6.75% 3/1/21	570,000	444,600
Kinder Morgan		
3.05% 12/1/19	5,000	5,033
5.30% 12/1/34	5,000	5,110
5.55% 6/1/45	5,000	5,100
Kinder Morgan Energy Partners		
9.00% 2/1/19	20,000	24,769
Laredo Petroleum		
5.625% 1/15/22	385,000	365,750
7.375% 5/1/22	75,000	76,125
Marathon Petroleum		
4.75% 9/15/44	20,000	19,307
Midstates Petroleum		
9.25% 6/1/21 *	740,000	617,900
Murphy Oil USA		
6.00% 8/15/23	400,000	425,000
Newfield Exploration		
5.625% 7/1/24	10,000	10,625
NiSource Finance		
6.125% 3/1/22	5,000	5,986
Noble Energy		
3.90% 11/15/24	5,000	5,033

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5.05% 11/15/44	5,000	5,047
Northern Blizzard Resources 144A		
7.25% 2/1/22 #	254,000	236,220
Northern Oil & Gas		
8.00% 6/1/20 *	370,000	329,300
NuStar Logistics		
6.75% 2/1/21	240,000	261,295
Oasis Petroleum		
6.875% 3/15/22	635,000	600,075
Ocean Rig UDW 144A		
7.25% 4/1/19 #	645,000	509,550
PDC Energy 7.75% 10/15/22	245,000	247,756
Petrobras International Finance		
5.375% 1/27/21	39,000	39,027
Petroleos Mexicanos		
5.50% 6/27/44	512,000	529,920
6.625% 6/15/35	1,000,000	1,175,000

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	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Energy (continued)		
Phillips 66		
4.65% 11/15/34	5,000	\$ 5,140
4.875% 11/15/44	10,000	10,223
Pioneer Energy Services		
6.125% 3/15/22	440,000	360,800
Plains All American Pipeline		
8.75% 5/1/19	10,000	12,606
Pride International		
6.875% 8/15/20	20,000	23,283
Regency Energy Partners		
5.875% 3/1/22	385,000	398,475
SandRidge Energy		
8.125% 10/15/22	505,000	409,050
Statoil 2.90% 11/8/20	30,000	30,797
Sunoco Logistics Partners Operations		
3.45% 1/15/23	10,000	9,847
Talisman Energy		
5.50% 5/15/42	25,000	23,189
TransCanada PipeLines		
6.35% 5/15/67	20,000	19,950
Triangle USA Petroleum 144A		
6.75% 7/15/22 #	165,000	135,300
Warren Resources 144A		
9.00% 8/1/22 #	260,000	217,750
Williams 4.55% 6/24/24	20,000	19,818
Williams Partners		
7.25% 2/1/17	20,000	22,376
Woodside Finance 144A		
8.75% 3/1/19 #	15,000	18,816
		14,720,925
Financials 0.18%		
Aviation Capital Group 144A		
6.75% 4/6/21 #	5,000	5,725
	270,000	273,375



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e*trade Financial		
5.375% 11/15/22		
General Electric Capital		
2.10% 12/11/19	35,000	35,508
3.45% 5/15/24 *	35,000	36,233
5.55% 5/4/20	5,000	5,806
6.00% 8/7/19	10,000	11,757
		368,404

Healthcare 2.73%		
Air Medical Group Holdings		
9.25% 11/1/18	229,000	240,736
Amgen 3.625% 5/22/24	5,000	5,057
Amsurg 144A		
5.625% 7/15/22 #	215,000	221,450
	<b>Principal</b>	<b>Value</b>
	<b>amount<sup>o</sup></b>	<b>(U.S. \$)</b>

**Corporate Bonds** (continued)

Healthcare (continued)		
Community Health Systems		
6.875% 2/1/22 *	485,000	\$ 515,919
7.125% 7/15/20	105,000	111,169
8.00% 11/15/19	25,000	26,813
Crimson Merger Sub 144A		
6.625% 5/15/22 #	290,000	270,787
DaVita HealthCare Partners		
5.125% 7/15/24	930,000	955,575
Immucor 11.125% 8/15/19	420,000	459,900
Kinetic Concepts		
10.50% 11/1/18	250,000	277,500
12.50% 11/1/19	180,000	199,800
Mallinckrodt International		
Finance		
4.75% 4/15/23	215,000	204,787
MPH Acquisition Holdings 144A		
6.625% 4/1/22 #	190,000	198,550
Par Pharmaceutical		
7.375% 10/15/20	780,000	824,850
Salix Pharmaceuticals 144A		
6.00% 1/15/21 #	300,000	306,750
Tenet Healthcare		
144A 5.00% 3/1/19 #	270,000	266,625
6.00% 10/1/20	180,000	191,925
8.125% 4/1/22	235,000	263,200
Valeant Pharmaceuticals International 144A		
6.375% 10/15/20 #	175,000	182,221

5,723,614

Healthcare REITs 0.00%		
Healthcare Trust of America		
Holdings 3.375% 7/15/21	5,000	5,037
		5,037
Insurance 1.02%		
Allstate 5.75% 8/15/53	10,000	10,569
American International Group		
8.175% 5/15/58	345,000	474,375
Berkshire Hathaway Finance		
2.90% 10/15/20	35,000	36,201
Chubb 6.375% 3/29/67	15,000	16,350
Highmark		
144A 4.75% 5/15/21 #	5,000	5,182
144A 6.125% 5/15/41 #	5,000	5,148
Hockey Merger Sub 2 144A		
7.875% 10/1/21 #	410,000	427,425
Liberty Mutual Group		
144A 4.25% 6/15/23 #	15,000	15,634
144A 4.95% 5/1/22 #	5,000	5,463
MetLife 6.40% 12/15/36	100,000	111,687

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## Delaware Enhanced Global Dividend and Income Fund

	<b>Principal</b>	<b>Value</b>
	<b>amount<sup>o</sup></b>	<b>(U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Insurance (continued)		
TIAA Asset Management		
Finance		
144A 2.95% 11/1/19 #	5,000	\$ 5,039
144A 4.125% 11/1/24 #	10,000	10,176
USI 144A 7.75% 1/15/21 #	395,000	401,913
Voya Financial		
5.65% 5/15/53	5,000	5,013
XL Group 6.50% 10/29/49	625,000	604,688
		2,134,863
Media 4.95%		
Altice 144A		
7.75% 5/15/22 #*	430,000	445,587
CBS Outdoor Americas		
Capital 144A		
5.875% 3/15/25 #	270,000	280,125
CCO Holdings		
5.25% 9/30/22	320,000	319,600
CCOH Safari		
5.50% 12/1/22	265,000	268,644
5.75% 12/1/24	475,000	479,156
Columbus International 144A		
7.375% 3/30/21 #	870,000	929,813
CSC Holdings 144A		
5.25% 6/1/24 #	695,000	690,656
DISH DBS 144A		
5.875% 11/15/24 #	300,000	303,000
Gannett		
144A 4.875% 9/15/21 #	85,000	85,637
144A 5.50% 9/15/24 #	290,000	294,713
Gray Television		
7.50% 10/1/20	645,000	670,800

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iHeartCommunications			
144A 9.00% 9/15/22 #	465,000		454,537
PIK 14.00% 2/1/21 *	338,950		279,210
MDC Partners 144A			
6.75% 4/1/20 #	415,000		430,044
Media General Financing			
144A 5.875%			
11/15/22 #	425,000		428,187
Mediacom Broadband			
5.50% 4/15/21	250,000		254,687
Numericable Group 144A			
6.00% 5/15/22 #	430,000		437,319
RCN Telecom Services 144A			
8.50% 8/15/20 #	315,000		338,625
Sinclair Television Group			
144A 5.625% 8/1/24 #	720,000		705,600
Unitymedia KabelBW 144A			
6.125% 1/15/25 #	480,000		503,400
	<b>Principal</b>		<b>Value</b>
	<b>amount<sup>o</sup></b>		<b>(U.S. \$)</b>

**Corporate Bonds (continued)**

Media (continued)

Virgin Media Finance			
144A 6.00% 10/15/24 #*	200,000	\$	210,250
144A 6.375% 4/15/23 #	815,000		872,050
VTR Finance 144A			
6.875% 1/15/24 #	650,000		685,750
			10,367,390

Real Estate Investment Trusts 0.07%

Alexandria Real Estate Equities			
4.50% 7/30/29	5,000		5,134
4.60% 4/1/22	15,000		15,990
AvalonBay Communities			
3.50% 11/15/24	5,000		5,025
Carey (W.P.) 4.60% 4/1/24	5,000		5,262
CBL & Associates			
4.60% 10/15/24	15,000		15,305
Corporate Office Properties			
3.60% 5/15/23	5,000		4,845
5.25% 2/15/24	10,000		10,801
DDR			
4.75% 4/15/18	5,000		5,424
7.50% 4/1/17	5,000		5,652
7.875% 9/1/20	20,000		24,897
Education Realty Operating Partnership			

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4.60% 12/1/24	5,000	5,107
Excel Trust 4.625% 5/15/24	5,000	5,181
Hospitality Properties Trust		
4.50% 3/15/25	5,000	5,026
Regency Centers		
5.875% 6/15/17	20,000	22,209
		135,858
Services 2.38%		
AECOM Technology		
144A 5.75% 10/15/22 #	165,000	173,250
144A 5.875% 10/15/24 #	200,000	212,000
Algeco Scotsman Global Finance 144A		
10.75% 10/15/19 #	615,000	578,100
Avis Budget Car Rental 144A		
5.50% 4/1/23 #	125,000	126,875
Caesars Growth Properties Holdings 144A		
9.375% 5/1/22 #	280,000	248,850
Covanta Holding		
5.875% 3/1/24	415,000	427,450
Geo Group		
5.125% 4/1/23	165,000	162,525

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	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Services (continued)		
Geo Group		
5.875% 10/15/24	275,000	\$ 281,875
Mattamy Group 144A		
6.50% 11/15/20 #	485,000	489,850
Navios South American Logistics 144A		
7.25% 5/1/22 #	375,000	385,313
Pinnacle Entertainment		
6.375% 8/1/21	170,000	178,075
7.75% 4/1/22 *	125,000	135,000
Stena 144A 7.00%		
2/1/24 #*	210,000	206,325
United Rentals North America		
5.75% 11/15/24	730,000	759,200
Watco 144A		
6.375% 4/1/23 #	185,000	189,163
West 144A		
5.375% 7/15/22 #	445,000	426,088
		4,979,939
Technology 2.33%		
BMC Software Finance 144A		
8.125% 7/15/21 #	235,000	221,487
CDW 5.50% 12/1/24	195,000	195,000
CommScope 144A		
5.50% 6/15/24 #	415,000	415,000
Entegris 144A		
6.00% 4/1/22 #	415,000	430,687
First Data		
11.25% 1/15/21	642,000	733,485
11.75% 8/15/21	535,500	622,519
First Data Holdings 144A PIK		
14.50% 9/24/19 #	24,400	25,757
Infinity Acquisition 144A		
7.25% 8/1/22 #	505,000	464,600
Infor Software Parent 144A PIK 7.125% 5/1/21 #T	690,000	691,725
	415,000	450,275

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j2 Global		
8.00% 8/1/20		
KLA-Tencor 4.65% 11/1/24	5,000	5,102
Motorola Solutions		
4.00% 9/1/24 *	10,000	9,988
National Semiconductor		
6.60% 6/15/17	20,000	22,726
NCR		
6.375% 12/15/23	295,000	308,275
NetApp		
3.25% 12/15/22	10,000	9,811
Oracle		
3.40% 7/8/24	5,000	5,145
4.50% 7/8/44	25,000	26,497
Seagate HDD Cayman		
144A 4.75% 1/1/25 #*	10,000	10,377
144A 5.75% 12/1/34 #	5,000	5,226
	<b>Principal</b>	<b>Value</b>
	<b>amount<sup>o</sup></b>	<b>(U.S. \$)</b>

**Corporate Bonds (continued)**

Technology (continued)

Viasystems 144A		
7.875% 5/1/19 #	205,000	\$ 217,300
Xerox		
6.35% 5/15/18 *	10,000	11,401
		4,882,383

Transportation 0.52%

American Airlines 2014-1 Class A Pass Through Trust		
3.70% 10/1/26 "	5,000	4,981
AP Moeller - Maersk		
144A 2.55% 9/22/19 #	5,000	5,062
144A 3.75% 9/22/24 #	5,000	5,166
Brambles USA 144A		
5.35% 4/1/20 #	15,000	16,984
Burlington Northern Santa Fe		
4.90% 4/1/44	30,000	32,995
ERAC USA Finance 144A		
5.25% 10/1/20 #	35,000	39,667
Norfolk Southern		
3.85% 1/15/24	35,000	37,047
Red de Carreteras de Occidente 144A		
9.00% 6/10/28 #	MXN 13,000,000	918,403
Trinity Industries		
4.55% 10/1/24	10,000	9,868
United Airlines 2014-1 Class A Pass Through Trust		
4.00%	5,000	5,075

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4/11/26 "		
United Airlines 2014-2 Class A Pass Through Trust		
3.75% 9/3/26 "	5,000	5,013
United Parcel Service		
5.125% 4/1/19	10,000	11,317
		1,091,578
Utilities 2.26%		
Abengoa Yield 144A		
7.00%		
11/15/19 #*	475,000	473,813
AES		
5.50% 3/15/24	595,000	609,875
7.375% 7/1/21	45,000	51,750
AES Gener 144A		
8.375% 12/18/73 #	200,000	223,400
Ameren Illinois		
9.75% 11/15/18	45,000	58,225
American Electric Power		
2.95% 12/15/22	5,000	4,948
American Transmission Systems 144A		
5.25% 1/15/22 #	25,000	27,987

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Corporate Bonds (continued)</b>		
Utilities (continued)		
American Water Capital 3.40% 3/1/25	5,000	\$ 5,083
Berkshire Hathaway Energy 3.75% 11/15/23	10,000	10,394
Calpine 5.375% 1/15/23	745,000	756,175
CMS Energy 6.25% 2/1/20	5,000	5,843
Commonwealth Edison 5.80% 3/15/18	5,000	5,680
Dominion Resources 3.625% 12/1/24	5,000	5,087
DPL 144A 6.75% 10/1/19 #	355,000	367,425
DTE Energy 2.40% 12/1/19 *	5,000	5,051
3.50% 6/1/24	5,000	5,081
Dynegy 5.875% 6/1/23	255,000	251,813
Dynegy Finance I/II 144A 6.75% 11/1/19 #	135,000	140,569
144A 7.375% 11/1/22 #	220,000	231,825
144A 7.625% 11/1/24 #	510,000	539,963
Electricite de France 144A 4.60% 1/27/20 #	15,000	16,676
Elwood Energy 8.159% 7/5/26	206,986	227,167
Enel 144A 8.75% 9/24/73 #	400,000	468,208
Entergy Arkansas 3.70% 6/1/24	5,000	5,291
Entergy Louisiana 4.05% 9/1/23	15,000	16,091

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Great Plains Energy		
4.85% 6/1/21	15,000	16,773
5.292% 6/15/22	5,000	5,743
IntegrYS Energy Group		
6.11% 12/1/66 *	15,000	15,243
IPALCO Enterprises		
5.00% 5/1/18	10,000	10,625
ITC Holdings		
3.65% 6/15/24 *	10,000	10,203
LG&E & KU Energy		
4.375% 10/1/21	20,000	21,417
National Rural Utilities Cooperative Finance		
4.75% 4/30/43	10,000	9,925
NextEra Energy Capital Holdings		
2.40% 9/15/19	10,000	10,051
3.625% 6/15/23	5,000	5,076
NV Energy		
6.25% 11/15/20	10,000	11,866
	<b>Principal</b>	<b>Value</b>
	<b>amount<sup>o</sup></b>	<b>(U.S. \$)</b>

**Corporate Bonds** (continued)

Utilities (continued)

Pennsylvania Electric		
5.20% 4/1/20	25,000	\$ 27,950
PPL Electric Utilities		
3.00% 9/15/21	10,000	10,243
Public Service New Hampshire		
3.50% 11/1/23	5,000	5,223
Public Service Oklahoma		
5.15% 12/1/19	30,000	33,826
Puget Energy		
6.00% 9/1/21	5,000	5,870
SCANA		
4.125% 2/1/22	10,000	10,458
Wisconsin Energy		
6.25% 5/15/67	10,000	10,210
		4,734,122

**Total Corporate Bonds**

(cost \$96,255,573) **95,688,926**

**Non-Agency Asset-Backed Securities 0.04%**

Fifth Third Auto Trust Series 2014-2 A2B		
0.315% 4/17/17	30,000	29,981

Nissan Auto Receivables Owner Trust Series 2013-C A3 0.67% 8/15/18	25,000	25,008
Nissan Master Owner Trust Receivables Series 2012-A A 0.625% 5/15/17	25,000	25,026
<b>Total Non-Agency Asset-Backed Securities</b> (cost \$80,081)		<b>80,015</b>

**Non-Agency Collateralized Mortgage  
Obligations 0.08%**

Citicorp Mortgage Securities Trust Series 2007-1 2A1 5.50% 1/25/22	5,689	5,722
Citicorp Residential Mortgage Trust Series 2006-3 A5 5.948% 11/25/36 f	100,000	99,889
GSR Mortgage Loan Trust Series 2006-AR1 3A1 2.833% 1/25/36	79,510	72,502
<b>Total Non-Agency Collateralized Mortgage Obligations</b> (cost \$170,864)		<b>178,113</b>

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	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Senior Secured Loans 2.44%«</b>		
Applied Systems 2nd Lien 7.50% 1/15/22	540,000	\$ 542,025
Ashland Water 2nd Lien 7.75% 7/2/22	150,000	147,825
Atkore International 2nd Lien 7.75% 9/27/21	210,000	207,244
Azure Midstream Tranche B 6.50% 10/21/18	79,193	77,807
BJ's Wholesale Club 2nd Lien 8.50% 3/31/20	420,000	421,943
Borgata Tranche B 1st Lien 6.75% 8/15/18	359,878	362,982
Clear Channel Communications Tranche D 6.91% 1/30/19	240,000	226,071
Flint Group 2nd Lien 8.25% 5/2/22	430,000	412,800
Gentiva Health Services Tranche B 6.50% 10/10/19	312,638	313,761
Hostess Brands 1st Lien 6.75% 3/12/20	412,925	422,990
LTS Buyer 2nd Lien 8.00% 3/15/21	60,088	60,538
Mauser Holdings 2nd Lien 8.25% 6/30/22	440,000	432,850
Moxie Liberty Tranche B 7.50% 8/21/20	215,000	219,300
Moxie Patriot (Panda Power Fund) Tranche B1 6.75% 12/19/20	210,000	212,100
Otterbox Tranche B 5.75% 5/30/20	324,188	321,553
Panda Stonewall Tranche B 6.50% 11/12/21	145,000	146,722
Rite Aid 2nd Lien 5.75% 8/3/20	198,000	199,650
Samson Investment 2nd Lien 5.00% 9/25/18	195,000	178,222
Vantage Drilling Tranche B 1st Lien	233,224	194,742

5.75% 3/28/19

**Total Senior Secured Loans**  
(cost \$5,193,950) **5,101,125**

**Principal** **Value**  
**amount<sup>o</sup>** **(U.S. \$)**

**Sovereign Bonds 2.82%r**

Brazil 0.45%

Brazil Notas do Tesouro Nacional Series F  
10.00% 1/1/17 BRL 2,500,000 \$ 937,608  
937,608

Indonesia 0.77%

Indonesia Government International Bond  
6.625% 2/17/37 1,350,000 1,616,625  
1,616,625

Mexico 1.09%

Mexican Bonos  
6.50% 6/10/21 MXN 20,282,000 1,551,341  
10.00% 12/5/24 MXN 7,720,000 731,883  
2,283,224

South Africa 0.51%

South Africa Government International Bond  
5.375% 7/24/44 1,000,000 1,062,995  
1,062,995

**Total Sovereign Bonds**  
(cost \$5,954,168) **5,900,452**

**Supranational Bank 0.71%**

Inter-American Development  
Bank  
7.25% 7/17/17 IDR 17,930,000,000 1,480,136

**Total Supranational Bank**  
(cost \$1,495,517) **1,480,136**

**U.S. Treasury Obligations 0.52%**

U.S. Treasury Bond		
3.125% 8/15/44	65,000	67,661
U.S. Treasury Notes		
1.50% 10/31/19 *	65,000	65,000
1.50% 11/30/19	100,000	99,961
2.375% 8/15/24	850,000	863,746
<b>Total U.S. Treasury Obligations</b>		<b>1,096,368</b>
(cost \$1,079,047)		

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Schedule of investments

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Principal amount<sup>o</sup></b>	<b>Value (U.S. \$)</b>
<b>Leveraged Non-Recourse Security 0.00%</b>		
JPMorgan Fixed Income Auction Pass Through Trust Series 2007-B 144A 8.845% 1/15/87 #@''	500,000	\$ 0
<b>Total Leveraged Non-Recourse Security</b> (cost \$425,000)		<b>0</b>
	<b>Number of shares</b>	
<b>Limited Partnership 0.18%</b>		
Ares Management	9,000	145,800
Brookfield Infrastructure Partners *	5,400	224,100
<b>Total Limited Partnership</b> (cost \$330,629)		<b>369,900</b>
<b>Preferred Stock 0.85%</b>		
Alabama Power 5.625%	410	10,189
Ally Financial 144A 7.00% #	800	807,025
Freddie Mac 6.02%	40,000	130,800
GMAC Capital Trust I 8.125%	12,000	317,280
Integrus Energy Group 6.00%	300	8,061
National Retail Properties 5.70%	200	4,776
Public Storage 5.20%	200	4,776
Regions Financial 6.375%	16,000	400,480
6.375%	200	5,066

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Vornado Realty Trust 6.625% 3,700 95,053

**Total Preferred Stock**  
(cost \$2,539,935) **1,783,506**

**Warrant 0.00%**

Wheeler Real Estate  
Investment Trust strike  
price \$5.50, expiration  
date 4/29/19 @ 12,540 4,201

**Total Warrant** (cost \$104) **4,201**

**Principal  
amount<sup>o</sup>**

**Short-Term Investments 0.09%**

Discount Notes 0.03%  
Federal Home Loan Bank  
0.065% 1/21/15 14,891 14,890

**Principal Value**  
**amount<sup>o</sup> (U.S. \$)**

**Short-Term Investments (continued)**

Discount Notes<sup>≠</sup> (continued)  
Federal Home Loan Bank  
0.065% 2/25/15 17,573 \$ 17,571  
0.065% 3/5/15 37,160 37,155

69,616

**Repurchase Agreements 0.06%**

Bank of America Merrill Lynch  
0.05%, dated 11/28/14, to be repurchased on 12/1/14, repurchase price \$40,899  
(collateralized by U.S. government obligations 0.00% 1.375% 4/15/16 2/15/43 market  
value \$41,717) 40,899 40,899

Bank of Montreal  
0.08%, dated 11/28/14, to be repurchased on 12/1/14, repurchase price \$13,633  
(collateralized by U.S. government obligations 0.25% 11.25% 11/30/14 2/15/22 market  
value \$13,906) 13,633 13,633

BNP Paribas  
0.09%, dated 11/28/14, to be repurchased on 12/1/14, repurchase price \$61,468  
(collateralized by U.S. government obligations 0.00% 3.625% 12/26/14 2/15/21 market  
value \$61,468) 61,468 61,468



value \$62,697)

	116,000
<b>Total Short-Term Investments</b> (cost \$185,613)	<b>185,616</b>
<b>Total Value of Securities Before Securities Lending Collateral 140.99%</b> (cost \$274,920,904)	<b>295,073,538</b>

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	<b>Number of shares</b>	<b>Value (U.S. \$)</b>
<b>Securities Lending Collateral** 6.93%</b>		
Investment Company		
Delaware Investments®		
Collateral Fund No. 1	14,496,291	\$ 14,496,291
<b>Total Securities Lending Collateral</b> (cost \$14,496,291)		<b>14,496,291</b>
<b>Total Value of Securities 147.92%</b> (cost \$289,417,195)		<b>\$ 309,569,829<sup>n</sup></b>

# Security exempt from registration under Rule 144A of the Securities Act of 1933, as amended. At Nov. 30, 2014, the aggregate value of Rule 144A securities was \$54,184,322, which represents 25.89% of the Fund's net assets. See Note 11 in Notes to financial statements.

\* Fully or partially on loan.

\*\* See Note 10 in Notes to financial statements for additional information on securities lending collateral and non-cash collateral.

@ Illiquid security. At Nov. 30, 2014, the aggregate value of illiquid securities was \$1,883,542, which represents 0.90% of the Fund's net assets. See Note 11 in Notes to financial statements.

.. Pass Through Agreement. Security represents the contractual right to receive a proportionate amount of underlying payments due to the counterparty pursuant to various agreements related to the rescheduling of obligations and the exchange of certain notes.

86% of the income received was in the form of cash and 14% of the income received was in the form of additional par.

Securities have been classified by type of business. Aggregate classification by country of origin has been presented in Security type / sector and country allocations on page 7.

100% of the income received was in the form of additional par.

T 100% of the income received was in the form of additional cash.

= Security is being fair valued in accordance with the Fund's fair valuation policy. At Nov. 30, 2014, the aggregate value of fair valued securities was \$35,473, which represents 0.02% of the Fund's net assets. See Note 1 in Notes to financial statements.

≠ The rate shown is the effective yield at the time of purchase.

n Includes \$17,326,237 of securities loaned.

° Principal amount shown is stated in U.S. dollars unless noted that the security is denominated in another currency. Non-income-producing security.

Variable rate security. The rate shown is the rate as of Nov. 30, 2014. Interest rates reset periodically.

- Fully or partially pledged as collateral for futures contracts.
- r Securities have been classified by country of origin.
  - « Senior secured loans generally pay interest at rates which are periodically redetermined by reference to a base lending rate plus a premium. These base lending rates are generally: (i) the prime rate offered by one or more United States banks, (ii) the lending rate offered by one or more European banks such as the London Inter-Bank Offered Rate (LIBOR), and (iii) the certificate of deposit rate. Senior secured loans may be subject to restrictions on resale. Stated rate in effect at Nov. 30, 2014.
  - f Step coupon bond. Coupon increases or decreases periodically based on a predetermined schedule. Stated rate in effect at Nov. 30, 2014.

The following futures contracts were outstanding at Nov. 30, 2014:<sup>1</sup>

### Futures Contracts

	Notional Cost (Proceeds)	Notional Value	Expiration Date	Unrealized Appreciation (Depreciation)
Contracts to Buy (Sell)				
(17) U.S. Treasury 5 yr Notes	\$ (2,022,553)	\$ (2,031,367)	4/1/15	\$ (8,814)

The use of futures contracts involves elements of market risk and risks in excess of the amounts disclosed in the financial statements. The notional value presented above represents the Fund's total exposure in such contracts, whereas only the net unrealized appreciation (depreciation) is reflected in the Fund's net assets.

<sup>1</sup>See Note 8 in Notes to financial statements.

### Summary of abbreviations:

- ADR American Depositary Receipt
- ARM Adjustable Rate Mortgage
- AUD Australian Dollar
- BRL Brazilian Real
- FDR Finnish Depositary Receipt
- GNMA Government National Mortgage Association
- IDR Indonesian Rupiah
- MXN Mexican Peso
- PIK Pay-in-kind
- REIT Real Estate Investment Trust
- REMIC Real Estate Mortgage Investment Conduit
- S.F. Single Family

TBA To be announced

yr Year

See accompanying notes, which are an integral part of the financial statements.

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Statement of assets and liabilities

**Delaware Enhanced Global Dividend and Income Fund**

November 30, 2014

**Assets:**

Investments, at value <sup>1, 2</sup>	\$ 294,887,922
Short-term investments held as collateral for loaned securities, at value <sup>3</sup>	14,496,291
Short-term investments, at value <sup>4</sup>	185,616
Cash	290,806
Foreign currencies, at value <sup>5</sup>	37,728
Dividend and interest receivable	2,657,121
Receivable for securities sold	783,977
Securities lending income receivable	8,091
 Total assets	 313,347,552

**Liabilities:**

Borrowing under line of credit	87,000,000
Obligation to return securities lending collateral	14,496,291
Payable for securities purchased	2,096,133
Interest payable for leverage	81,973
Variation margin due to broker on futures contracts	3,453
Investment management fees payable	231,527
Other accrued expenses	146,760
Other affiliates payable	7,781
Trustees' fees and expenses payable	1,214
Other liabilities	2,484
 Total liabilities	 104,067,616

<b>Total Net Assets</b>	<b>\$ 209,279,936</b>
-------------------------	-----------------------

**Net Assets Consist of:**

Paid-in capital	\$ 229,384,577
Distributions in excess of net investment income	(850,797)
Accumulated net realized loss on investments	(39,363,811)
Net unrealized appreciation of investments, foreign currencies, and derivatives	20,109,967

<b>Total Net Assets</b>	<b>\$ 209,279,936</b>
-------------------------	-----------------------

**Net Asset Value****Common Shares**

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Net assets	\$ 209,279,936
Shares of beneficial interest outstanding	15,863,616
Net asset value per share	\$ 13.19

<sup>1</sup> Investments, at cost	\$ 274,735,291
<sup>2</sup> Including securities on loan	17,326,237
<sup>3</sup> Short-term investments held as collateral for loaned securities, at cost	14,496,291
<sup>4</sup> Short-term investments, at cost	185,613
<sup>5</sup> Foreign currencies, at cost	39,202

See accompanying notes, which are an integral part of the financial statements.

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Statement of operations

**Delaware Enhanced Global Dividend and Income Fund**

Year ended November 30, 2014

**Investment Income:**

Interest	\$ 7,569,756
Dividends	5,994,388
Securities lending income	108,657
Foreign tax withheld	(254,009)
	13,418,792

**Expenses:**

Management fees	2,765,315
Interest expense	793,732
Reports to shareholders	145,321
Accounting and administration expenses	97,757
Legal fees	62,883
Dividend disbursing and transfer agent fees and expenses	51,862
Custodian fees	44,898
Audit and tax	39,476
Trustees fees and expenses	10,142
Registration fees	905
Other expenses	62,737
Total operating expenses	4,075,028

<b>Net Investment Income</b>	<b>9,343,764</b>
------------------------------	------------------

**Net Realized and Unrealized Gain (Loss):**

Net realized gain (loss) on:	
Investments	10,981,873
Foreign currencies	(1,711,203)
Foreign currency exchange contracts	(120,050)
Futures contracts	(44,646)
Options written	80,710
Swap contracts	(376)
Net realized gain	9,186,308

Net change in unrealized appreciation (depreciation) of:

Investments*	(9,376,752)
Foreign currencies	(17,435)

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Futures contracts	(8,814)
Options written	1,452
Net change in unrealized appreciation (depreciation)	(9,401,549)
<b>Net Realized and Unrealized Loss</b>	<b>(215,241)</b>
<b>Net Increase in Net Assets Resulting from Operations</b>	<b>\$ 9,128,523</b>

\*Includes \$2,454 capital gain taxes accrued.

See accompanying notes, which are an integral part of the financial statements.



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Statements of changes in net assets

**Delaware Enhanced Global Dividend and Income Fund**

	<b>Year ended</b>	
	<b>11/30/14</b>	<b>11/30/13</b>
<b>Increase (Decrease) in Net Assets from Operations:</b>		
Net investment income	\$ 9,343,764	\$ 9,148,614
Net realized gain	9,186,308	11,761,213
Net change in unrealized appreciation (depreciation)	(9,401,549)	17,193,617
Net increase in net assets resulting from operations	9,128,523	38,103,444
<b>Dividends and Distributions to Shareholders from:</b>		
Net investment income	(14,277,254)	(14,277,254)
	(14,277,254)	(14,277,254)
<b>Net Increase (Decrease) in Net Assets</b>	<b>(5,148,731)</b>	<b>23,826,190</b>
<b>Net Assets:</b>		
Beginning of year	214,428,667	190,602,477
End of year	\$ 209,279,936	\$ 214,428,667
Distributions in excess of net investment income	\$ (850,797)	\$ (1,261,955)

See accompanying notes, which are an integral part of the financial statements.

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Statement of cash flows

**Delaware Enhanced Global Dividend and Income Fund**

Year ended November 30, 2014

**Net Cash (including Foreign Currency) Provided by (Used for) Operating Activities:**

Net increase in net assets resulting from operations	\$ 9,128,523
Adjustments to reconcile net increase in net assets from operations to cash provided by (used for) operating activities:	
Amortization of premium and accretion of discount on investments, net	114,814
Purchase of investment securities	(183,949,858)
Proceeds from disposition of investment securities	160,620,295
Proceeds from disposition of short-term investment securities, net	9,241,135
Premiums received on options written	133,302
Options expired/exercised and terminated in closing purchase transactions	(143,242)
Net realized gain on investments	(9,214,171)
Net change in unrealized appreciation (depreciation)	9,392,735
Increase in securities lending collateral	3,531,716
Increase in receivable for investments sold	(370,098)
Increase in dividends and interest receivable and other assets	(274,263)
Increase in variation margin due to broker on futures contracts	3,453
Decrease in payable for investments purchased	(462,903)
Increase in investment management fees payable	13,412
Decrease in Trustees fees and expenses payable	(286)
Decrease in other affiliates payable	(2,282)
Increase in interest expense payable	20,611
Increase in other accrued expenses and other liabilities	21,598
Total adjustments	(11,324,032)
Net cash provided by operating activities	(2,195,509)
<b>Cash Flows Provided by (Used for) Financing Activities:</b>	
Increase in borrowing under line of credit	21,275,000
Cash dividends and distributions paid to shareholders	(14,277,254)
Increase in obligation to return securities lending collateral	(3,531,716)
Net cash used for financing activities	3,466,030
Effect of exchange rates on cash	(17,435)
Net increase in cash	1,253,086

Cash at beginning of year*	(924,552)
Cash at end of year*	\$ 328,534
Cash paid for interest expense on leverage	\$ 773,121

\*Includes foreign currencies, at value as shown on the Statement of assets and liabilities.

See accompanying notes, which are an integral part of the financial statements.

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Financial highlights

**Delaware Enhanced Global Dividend and Income Fund**

Selected data for each share of the Fund outstanding throughout each period were as follows:

	11/30/14	11/30/13	Year ended 11/30/12	11/30/11	11/30/10
<b>Net asset value, beginning of period</b>	\$ 13.520	\$ 12.020	\$ 11.350	\$ 12.320	\$ 12.060
<b>Income (loss) from investment operations:</b>					
Net investment income <sup>1</sup>	0.589	0.577	0.557	0.587	0.568
Net realized and unrealized gain (loss)	(0.019)	1.823	1.261	(0.327)	0.922
<b>Total from investment operations</b>	<b>0.570</b>	<b>2.400</b>	<b>1.818</b>	<b>0.260</b>	<b>1.490</b>
<b>Less dividends and distributions from:</b>					
Net investment income	(0.900)	(0.900)	(0.627)	(0.750)	(0.918)
Return of capital			(0.521)	(0.480)	(0.312)
<b>Total dividends and distributions</b>	<b>(0.900)</b>	<b>(0.900)</b>	<b>(1.148)</b>	<b>(1.230)</b>	<b>(1.230)</b>
<b>Net asset value, end of period</b>	<b>\$ 13.190</b>	<b>\$ 13.520</b>	<b>\$ 12.020</b>	<b>\$ 11.350</b>	<b>\$ 12.320</b>
<b>Market value, end of period</b>	<b>\$ 11.960</b>	<b>\$ 12.250</b>	<b>\$ 11.100</b>	<b>\$ 10.920</b>	<b>\$ 12.310</b>
<b>Total return based on:<sup>2</sup></b>					
Net asset value	4.94%	21.19%	16.85%	1.77%	13.13%
Market value	5.02%	18.91%	12.15%	(2.01%)	10.92%
<b>Ratios and supplemental data:</b>					
Net assets, end of period (000 omitted)	\$ 209,280	\$ 214,429	\$ 190,602	\$ 179,414	\$ 160,465
Ratio of expenses to average net assets <sup>3,4</sup>	1.88%	1.88%	2.15%	1.98%	1.95%
Ratio of net investment income to average net assets <sup>5</sup>	4.31%	4.47%	4.74%	4.68%	4.68%
Portfolio turnover	56%	56%	53%	72%	83%
<b>Leverage analysis:</b>					
Debt outstanding at end of period at par (000 omitted)	\$ 87,000	\$ 65,725	\$ 65,725	\$ 50,725	\$ 40,000
Asset coverage per \$1,000 of debt outstanding at end of period	\$ 3,406	\$ 4,263	\$ 3,900	\$ 4,537	\$ 5,012

- <sup>1</sup> The average shares outstanding method has been applied for per share information.
  - <sup>2</sup> Total investment return is calculated assuming a purchase of common stock on the opening of the first day and a sale on the closing of the last day of each period reported. Dividends and distributions, if any, are assumed for the purpose of this calculation, to be reinvested at prices obtained under the Fund's dividend reinvestment plan. Generally, total investment return based on net asset value will be higher than total investment return based on market value in periods where there is an increase in the discount or decrease in the premium of the market value to the net asset value from the beginning to the end of such periods. Conversely, total investment return based on net asset value will be lower than total investment return based on market value in periods where there is a decrease in the discount or an increase in the premium of the market value to the net asset value from the beginning to the end of such periods.
  - <sup>3</sup> The ratio of interest expense to adjusted average net assets (excluding debt outstanding) for the years ended Nov. 30, 2014, 2013, 2012, 2011, and 2010 were 0.27%, 0.27%, 0.42%, 0.31%, and 0.33%, respectively.
  - <sup>4</sup> The ratio of expenses before interest expense to adjusted average net assets (excluding debt outstanding) for the years ended Nov. 30, 2014, 2013, 2012, 2011, and 2010 were 1.13%, 1.15%, 1.19%, 1.28%, and 1.22%, respectively.
  - <sup>5</sup> The ratio of net investment income to adjusted average net assets (excluding debt outstanding) for the years ended Nov. 30, 2014, 2013, 2012, 2011, and 2010 were 3.21%, 3.38%, 3.57%, 3.76%, and 3.73%, respectively.
- See accompanying notes, which are an integral part of the financial statements.

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### **Delaware Enhanced Global Dividend and Income Fund**

November 30, 2014

Delaware Enhanced Global Dividend and Income Fund (Fund) is organized as a Delaware statutory trust, and is a diversified closed-end management investment company under the Investment Company Act of 1940, as amended. The Fund's shares trade on the New York Stock Exchange (NYSE) under the symbol DEX.

The primary investment objective of the Fund is to seek current income, with a secondary objective of capital appreciation.

#### **1. Significant Accounting Policies**

The following accounting policies are in accordance with U.S. generally accepted accounting principles (U.S. GAAP) and are consistently followed by the Fund.

**Security Valuation** Equity securities and exchange-traded funds (ETFs), except those traded on the Nasdaq Stock Market, Inc. (Nasdaq), are valued at the last quoted sales price as of the time of the regular close of the NYSE on the valuation date. Securities and ETFs traded on the Nasdaq are valued in accordance with the Nasdaq Official Closing Price, which may not be the last sales price. If, on a particular day, an equity security or ETF does not trade, then the mean between the bid and ask prices will be used, which approximates fair value. Securities listed on a foreign exchange are normally valued at the last quoted sales price on the valuation date. Open-end investment company securities are valued at net asset value per share, as reported by the underlying investment company. U.S. government and agency securities are valued at the mean between the bid and ask prices, which approximates fair value. Other debt securities and credit default swap (CDS) contracts are valued based upon valuations provided by an independent pricing service or broker/counterparty and reviewed by management. To the extent current market prices are not available, the pricing service may take into account developments related to the specific security, as well as transactions in comparable securities. Valuations for fixed income securities utilize matrix systems, which reflect such factors as security prices, yields, maturities, and ratings, and are supplemented by dealer and exchange quotations. For asset-backed securities, collateralized mortgage obligations, commercial mortgage securities and U.S. government agency mortgage securities, pricing vendors utilize matrix pricing which considers prepayment speed, attributes of the collateral, yield or price of bonds of comparable quality, coupon, maturity, and type as well as broker/dealer-supplied prices. Swap prices are derived using daily swap curves and models that incorporate a number of market data factors, such as discounted cash flows, trades, and values of the underlying reference instruments. Foreign currency exchange contracts and foreign cross currency exchange contracts are valued at the mean between the bid and ask prices, which approximates fair value. Interpolated values are derived when the settlement date of the contract is an interim date for which quotations are not available. Futures contracts are valued at the daily quoted settlement prices. Exchange-traded options are valued at the last reported sale price or, if no sales are reported, at the mean between the last reported bid and ask prices, which approximates fair value. Generally, other securities and assets for which market quotations are not readily available are valued at fair value as determined in good faith under the direction of the Fund's Board of Trustees (Board). In determining whether market quotations are readily available or fair valuation will be used, various factors will be taken into consideration, such as market closures or suspension of trading in a security. The Fund may use fair value pricing more frequently for securities traded primarily in non-U.S. markets because, among other things, most foreign markets close well before the Fund values its securities, generally as of 4:00 p.m. Eastern time. The earlier close of these foreign markets gives rise to the possibility that significant events, including broad market moves, government actions or pronouncements, aftermarket trading, or news events may have occurred in the

interim. Whenever such a significant event occurs, the Fund may value foreign securities using fair value prices based on third-party vendor modeling tools (international fair value pricing).

**Federal and Foreign Income Taxes** No provision for federal income taxes has been made as the Fund intends to continue to qualify for federal income tax purposes as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended, and make the requisite distributions to shareholders. The Fund evaluates tax positions taken or expected to be taken in the course of preparing the Fund's tax returns to determine whether the tax positions are more likely-than-not of being sustained by the applicable tax authority. Tax positions not deemed to meet the more-likely-than-not threshold are recorded as a tax benefit or expense in the current year. Management has analyzed the Fund's tax positions taken for all open federal income tax years (Nov. 30, 2011–Nov. 30, 2014), and has concluded that no provision for federal income tax is required in the Fund's financial statements. In regard to foreign taxes only, the Fund has open tax years in certain foreign countries in which it invests that may date back to the inception of the Fund.

**Distributions** The Fund has implemented a managed distribution policy. Under the policy, the Fund is managed with a goal of generating as much of the distribution as possible from net investment income and short-term capital gains. The balance of the distribution will then come from long-term capital gains to the extent permitted, and if necessary, a return of capital. Even though the Fund may realize current year capital gains, such gains may be offset, in whole or in part, by the Fund's capital loss carryovers from prior years. For federal income tax purposes, the effect of such capital loss carryovers may be to convert (to the extent of such current year gains) what would otherwise be non-taxable returns

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Notes to financial statements

### Delaware Enhanced Global Dividend and Income Fund

#### **1. Significant Accounting Policies (continued)**

of capital into distributions taxable as ordinary income. The use of such capital loss carryovers in this circumstance will produce no tax benefit for shareholders, and the capital loss carryovers available to offset future capital gains of the Fund will be reduced. Under the Regulated Investment Company Modernization Act of 2010 (Act), this tax effect attributable to the Fund's capital loss carryovers (the conversion of returns of capital into distributions taxable as ordinary income) will no longer apply to net capital losses of the Fund arising in Fund tax years beginning after Nov. 30, 2011. The actual determination of the source of the Fund's distributions can be made only at year end. Shareholders should receive written notification regarding the actual components and tax treatments of all Fund distributions for the calendar year 2014 in early 2015.

**Repurchase Agreements** The Fund may purchase certain U.S. government securities subject to the counterparty's agreement to repurchase them at an agreed upon date and price. The counterparty will be required on a daily basis to maintain the value of the collateral subject to the agreement at not less than the repurchase price (including accrued interest). The agreements are conditioned upon the collateral being deposited under the Federal Reserve book-entry system with the Fund's custodian or a third-party sub-custodian. In the event of default or bankruptcy by the other party to the agreement, retention of the collateral may be subject to legal proceedings. All open repurchase agreements as of the date of this report were entered into on Nov. 28, 2014.

**To Be Announced Trades (TBA)** The Fund may contract to purchase or sell securities for a fixed price at a transaction date beyond the customary settlement period (examples: when issued, delayed delivery, forward commitment, or TBA transactions) consistent with the Fund's ability to manage its investment portfolio and meet redemption requests. These transactions involve a commitment by the Fund to purchase or sell securities for a predetermined price or yield with payment and delivery taking place more than three days in the future, or after a period longer than the customary settlement period for that type of security. No interest will be earned by the Fund on such purchases until the securities are delivered or the transaction is completed; however, the market value may change prior to delivery.

**Foreign Currency Transactions** Transactions denominated in foreign currencies are recorded at the prevailing exchange rates on the valuation date in accordance with the Fund's prospectus. The value of all assets and liabilities denominated in foreign currencies is translated daily into U.S. dollars at the exchange rate of such currencies against the U.S. dollar. Transaction gains or losses resulting from changes in exchange rates during the reporting period or upon settlement of the foreign currency transaction are reported in operations for the current period. The Fund generally bifurcates that portion of realized gains and losses on investments in debt securities which is due to changes in foreign exchange rates from that which is due to changes in market prices of debt securities. That portion of gains (losses) is included on the Statement of operations under Net realized gain (loss) on foreign currencies. For foreign equity securities, these changes are included in net realized and unrealized gain or loss on investments. The Fund reports certain foreign currency related transactions as components of realized gains (losses) for financial reporting purposes, whereas such components are treated as ordinary income (loss) for federal income tax purposes.

**Use of Estimates** The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the fair value of investments, the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and the differences



could be material.

**Other** Expenses directly attributable to the Fund are charged directly to the Fund. Other expenses common to various funds within the Delaware Investments® Family of Funds are generally allocated among such funds on the basis of average net assets. Management fees and some other expenses are paid monthly. Security transactions are recorded on the date the securities are purchased or sold (trade date) for financial reporting purposes. Costs used in calculating realized gains and losses on the sale of investment securities are those of the specific securities sold. Dividend income is recorded on the ex-dividend date and interest income is recorded on the accrual basis. Discounts and premiums on debt securities are amortized to interest income over the lives of the respective securities using the effective interest method. Realized gains (losses) on paydowns of asset- and mortgage-backed securities are classified as interest income. Distributions received from investments in real estate investment trusts (REITs) are recorded as dividend income on the ex-dividend date, subject to reclassification upon notice of the character of such distributions by the issuer. Foreign dividends are also recorded on the ex-dividend date or as soon after the ex-dividend date that the Fund is aware of such dividends, net of all tax withholdings, a portion of which may be reclaimable. Withholding taxes and reclaims on foreign dividends have been recorded in accordance with the Fund's understanding of the applicable country's tax rules and rates. The Fund may pay foreign capital gain taxes on certain foreign securities held, which are reported as components of realized losses for financial reporting purposes, whereas such components are treated as ordinary loss for federal income tax purposes.

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The Fund may receive earnings credits from its custodian when positive cash balances are maintained, which may be used to offset custody fees. There were no earnings credits for the year ended Nov. 30, 2014.

**2. Investment Management, Administration Agreements and Other Transactions with Affiliates**

In accordance with the terms of its investment management agreement, the Fund pays Delaware Management Company (DMC), a series of Delaware Management Business Trust, and the investment manager, an annual fee of 0.95%, of the adjusted average daily net assets of the Fund. For purposes of the calculation of investment management fees, adjusted average daily net assets excludes the line of credit liability.

Effective Nov. 1, 2014, Delaware Investments Fund Services Company (DIFSC), an affiliate of DMC, provides fund accounting and financial administration oversight services to the Fund. Prior to this time, Delaware Service Company, Inc. (DSC), an affiliate of DMC, provided fund accounting and financial administration oversight services to the Fund. For these services, the Fund pays DIFSC fees based on the aggregate daily net assets (excluding the line of credit liability) of the Delaware Investments® Family of Funds at the following annual rate: 0.0050% of the first \$30 billion; and 0.0045% of the next \$10 billion; 0.0040% of the next \$10 billion; and 0.0025% of aggregate average daily net assets in excess of \$50 billion. The fees payable to DIFSC under the service agreement described above are allocated among all Funds in the Delaware Investments Family of Funds on a relative net asset value basis. For the year ended Nov. 30, 2014, the Fund was charged \$13,954 for these services. This amount is included on the Statement of operations under Accounting and administration expenses.

As provided in the investment management agreement, the Fund bears a portion of the cost of resources shared with DMC, including the cost of internal personnel of DMC and its affiliates that provide legal, tax, and regulatory reporting services to the Fund. For the year ended Nov. 30, 2014, the Fund was charged \$34,612 for internal legal, tax, and regulatory reporting services provided by DMC and/or its affiliates employees. This amount is included on the Statement of operations under Legal fees.

Trustees fees include expenses accrued by the Fund for each Trustee's retainer and meeting fees. Certain officers of DMC and DIFSC are Officers and/or Trustees of the Fund. These Officers and Trustees are paid no compensation by the Fund.

**3. Investments**

For the year ended Nov. 30, 2014, the Fund made purchases and sales of investment securities other than short-term investments as follows:

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Purchases other than U.S. government securities	\$ 178,277,791
Purchases of U.S. government securities	5,672,067
Sales other than U.S. government securities	155,202,758
Sales of U.S. government securities	5,417,537

At Nov. 30, 2014, the cost of investments and unrealized appreciation (depreciation) for federal income tax purposes were as follows:

Cost of investments	\$ 291,435,629
Aggregate unrealized appreciation	\$ 40,064,690
Aggregate unrealized depreciation	(21,930,490)
Net unrealized appreciation	\$ 18,134,200

U.S. GAAP defines fair value as the price that the Fund would receive to sell an asset or pay to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. A three-level hierarchy for fair value measurements has been established based upon the transparency of inputs to the valuation of an asset or liability. Inputs may be observable or unobservable and refer broadly to the assumptions that market participants would use in pricing the asset or liability. Observable inputs reflect the assumptions market participants would use in pricing the asset or liability based on market data obtained from sources independent of the reporting entity. Unobservable inputs reflect the reporting entity's own assumptions about the assumptions that market participants would use in pricing the asset or liability based on the best information available under the circumstances. The Fund's investment in its entirety is assigned a level based upon the observability of the inputs which are significant to the overall valuation. The three-level hierarchy of inputs is summarized below.

Level 1 Inputs are quoted prices in active markets for identical investments. (Examples: equity securities, open-end investment companies, futures contracts, exchange-traded options contracts)

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Notes to financial statements

**Delaware Enhanced Global Dividend and Income Fund****3. Investments (continued)**

Level 2 Other observable inputs, including, but not limited to: quoted prices for similar assets or liabilities in markets that are active, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable for the assets or liabilities (such as interest rates, yield curves, volatilities, prepayment speeds, loss severities, credit risks, and default rates) or other market-corroborated inputs. (Examples: debt securities, government securities, swap contracts, foreign currency exchange contracts, foreign securities utilizing international fair value pricing, broker-quoted securities, fair valued securities)

Level 3 Significant unobservable inputs, including the Fund's own assumptions used to determine the fair value of investments. (Examples: broker-quoted securities, fair valued securities)

Level 3 investments are valued using significant unobservable inputs. The Fund may also use an income-based valuation approach in which the anticipated future cash flows of the investment are discounted to calculate fair value. Discounts may also be applied due to the nature or duration of any restrictions on the disposition of the investments. Valuations may also be based upon current market prices of securities that are comparable in coupon, rating, maturity, and industry. The derived value of a Level 3 investment may not represent the value which is received upon disposition and this could impact the results of operations.

The following table summarizes the valuation of the Fund's investments by fair value hierarchy levels as of Nov. 30, 2014:

	Level 1	Level 2	Level 3	Total
Agency, Asset-Backed & Mortgage-Backed Securities	\$	\$ 1,470,311	\$	\$ 1,470,311
Corporate Debt		122,325,336		122,325,336
Foreign Debt		7,380,588		7,380,588
Senior Secured Loans <sup>1</sup>		4,022,206	1,078,919	5,101,125
Common Stock	146,676,140			146,676,140
Convertible Preferred Stock <sup>1</sup>	5,737,801	2,735,986	35,473	8,509,260
Exchange-Traded Note	171,187			171,187
Limited Partnership	369,900			369,900
Preferred Stock <sup>1</sup>	845,681	937,825		1,783,506
Warrant	4,201			4,201
U.S. Treasury Obligations		1,096,368		1,096,368
Short-Term Investments		185,616		185,616
Securities Lending Collateral		14,496,291		14,496,291
Total	\$ 153,804,910	\$ 154,650,527	\$ 1,114,392	\$ 309,569,829
Futures Contracts	\$ (8,814)	\$	\$	\$ (8,814)

<sup>1</sup>Security type is valued across multiple levels. Level 1 investments represent exchange-traded investments, Level 2 investments represent investments with observable inputs or matrix-priced investments, and Level 3 investments represent investments without observable inputs. The amounts attributed to Level 1 investments, Level 2 investments, and Level 3 investments represent the following percentages of the total market value of these security types:

	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Total</b>
Convertible Preferred Stock	67.43%	32.15%	0.42%	100.00%
Senior Secured Loans		78.85%	21.15%	100.00%
Preferred Stock	47.42%	52.58%		100.00%

The securities that have been deemed worthless on the Schedule of investments are considered to be Level 3 investments in these tables.

During the year ended Nov. 30, 2014, there were no transfers between Level 1 investments, Level 2 investments, or Level 3 investments that had a significant impact to the Fund. This does not include transfers between Level 1 investments and Level 2 investments due to the Fund utilizing international fair value pricing during the year. In accordance with the fair valuation procedures described in Note 1, international fair value pricing of securities in the Fund occurs when market volatility exceeds an established rolling threshold. If the threshold is exceeded on a given date, then prices of international securities (those that traded on exchanges that close at a different time than the time that the Fund s

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net asset value is determined) will be established using a separate pricing feed from a third-party vendor designed to establish a price for each such security as of the time that the Fund's net asset value is determined. Further, international fair value pricing uses other observable market-based inputs in place of the closing exchange price due to the events occurring after the close of the exchange or market on which the investment is principally traded, causing a change in classification between levels. The Fund's policy is to recognize transfers between levels at the beginning of the reporting period.

A reconciliation of Level 3 investments is presented when the Fund has a significant amount of Level 3 investments at the beginning, interim, or end of the period in relation to the Fund's net assets. Management has determined not to provide additional disclosure on Level 3 inputs under ASU No. 2011-04 since the Level 3 investments are not considered significant to the Fund's net assets at the end of the year.

**4. Dividend and Distribution Information**

Income and long-term capital gain distributions are determined in accordance with federal income tax regulations, which may differ from U.S. GAAP. Additionally, distributions from net gains on foreign currency transactions and net short-term gains on sales of investment securities are treated as ordinary income for federal income tax purposes. The tax character of dividends and distributions paid during the years ended Nov. 30, 2014 and 2013 was as follows:

	<b>Year ended</b>	
	<b>11/30/14</b>	<b>11/30/13</b>
Ordinary income	\$ 14,277,254	\$ 14,277,254

**5. Components of Net Assets on a Tax Basis**

As of Nov. 30, 2014, the components of net assets on a tax basis were as follows:

Shares of beneficial interest	\$ 229,384,577
Capital loss carryforwards	(38,187,667)
Other temporary differences	(17,321)
Unrealized appreciation	18,100,347
<b>Net assets</b>	<b>\$ 209,279,936</b>

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The differences between book basis and tax basis components of net assets are primarily attributable to tax deferral of losses on wash sales, mark-to-market on futures contracts, contingent payment debt instruments, partnership income, trust preferred securities, tax deferral of losses on straddles, market discount and premium on debt instruments, and unrealized gain on passive foreign investment companies.

For financial reporting purposes, capital accounts are adjusted to reflect the tax character of permanent book/tax differences. Reclassifications are primarily due to tax treatment of gain (loss) on foreign currency transactions, dividends and distributions, contingent payment debt instruments, CDS contracts, partnership income, market discount and premium on certain debt instruments, paydowns of asset- and mortgage-backed securities, and passive foreign investment companies. Results of operations and net assets were not affected by these reclassifications. For the year ended Nov. 30, 2014, the Fund recorded the following reclassifications:

Distributions in excess of net investment income	\$ 5,344,648
Accumulated net realized loss	945,477
Paid-in capital	(6,290,125)

For federal income tax purposes, capital loss carryforwards may be carried forward and applied against future capital gains. \$9,985,255 was utilized in 2014. Capital loss carryforwards remaining at Nov. 30, 2014, will expire as follows: \$15,939,445 expires in 2016 and \$22,248,222 expires in 2017.

On Dec. 22, 2010, the Act was enacted, which changed various technical rules governing the tax treatment of regulated investment companies. The changes are generally effective for taxable years beginning after the date of enactment. Under the Act, the Fund is permitted to carry forward capital losses incurred in taxable years beginning after the date of enactment for an unlimited period. However, any losses incurred during those future taxable years will be required to be utilized prior to the losses incurred in pre-enactment taxable years, which carry an expiration date. As a result of this ordering rule, pre-enactment capital loss carryforwards may be more likely to expire unused. Additionally, post-enactment capital loss carryforwards will retain their character as either short-term or long-term capital losses rather than being

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### **Delaware Enhanced Global Dividend and Income Fund**

#### **5. Components of Net Assets on a Tax Basis (continued)**

considered all short-term as permitted under previous regulation. At Nov. 30, 2014, there were no capital loss carryforwards incurred that will be carried forward under the Act.

#### **6. Capital Stock**

Shares obtained under the Fund's dividend reinvestment plan are purchased by the Fund's transfer agent, Computershare, Inc. (Computershare), in the open market, if the shares of the Fund are trading at a discount to the Fund's net asset value on the dividend payment date. However, the dividend reinvestment plan provides that if the shares of the Fund are trading at a premium to the Fund's net asset value on the dividend payment date, the Fund will issue shares to shareholders of record at net asset value. During the years ended Nov. 30, 2014 and 2013, the Fund did not issue any shares under the Fund's dividend reinvestment plan.

#### **7. Line of Credit**

For the year ended Nov. 30, 2014, the Fund borrowed a portion of the money available to it pursuant to a \$67,000,000 Credit Agreement with The Bank of New York Mellon (BNY Mellon) that expired on June 25, 2014. Effective June 25, 2014, the Credit agreement was renewed through June 24, 2015 for \$87,000,000. Depending on market conditions, the amount borrowed by the Fund pursuant to the Credit Agreement may be reduced or possibly increased in the future.

At Nov. 30, 2014, the par value of loans outstanding was \$87,000,000, at a variable interest rate of 1.03%. During the year ended Nov. 30, 2014, the average daily balance of loans outstanding was \$74,235,000, at a weighted average interest rate of approximately 1.05%.

Interest on borrowings is based on a variable short-term rate plus an applicable margin. Prior to June 25, 2014, the commitment fee under the Credit Agreement was computed at a rate of 0.15% per annum on the unused balance. On June 25, 2014, the commitment fee was changed to a rate of 0.10% per annum on the unused balance. The loan is collateralized by the Fund's portfolio.

#### **8. Derivatives**

U.S. GAAP requires disclosures that enable investors to understand: (1) how and why an entity uses derivatives; (2) how they are accounted for; and (3) how they affect an entity's results of operations and financial position.

**Foreign Currency Exchange Contracts** The Fund may enter into foreign currency exchange contracts and foreign cross currency exchange contracts as a way of managing foreign exchange rate risk. The Fund may enter into these contracts to fix the U.S. dollar value of a security that it has agreed to buy or sell for the period between the date the trade was entered into and the date the security is delivered and paid for. The Fund may also use these contracts to hedge the U.S. dollar value of securities it already owns that are denominated in foreign currencies. In addition, the Fund may enter into these contracts to facilitate or expedite the settlement of portfolio transactions. The change in value is recorded as an unrealized gain or loss. When the contract is closed, a realized gain or loss is recorded equal to the difference between the value of the contract at the time it was opened and the value at the time it was closed.



The use of foreign currency exchange contracts and foreign cross currency exchange contracts does not eliminate fluctuations in the underlying prices of the securities, but does establish a rate of exchange that can be achieved in the future. Although foreign currency exchange contracts and foreign cross currency exchange contracts limit the risk of loss due to an unfavorable change in the value of the hedged currency, they also limit any potential gain that might result should the value of the currency change favorably. In addition, the Fund could be exposed to risks if the counterparties to the contracts are unable to meet the terms of their contracts. The Fund's maximum risk of loss from counterparty credit risk is the value of its currency exchanged with the counterparty. The risk is generally mitigated by having a netting arrangement between the Fund and the counterparty and by the posting of collateral by the counterparty to the Fund to cover the Fund's exposure to the counterparty. No foreign currency exchange contracts were outstanding at Nov. 30, 2014.

During the year ended Nov. 30, 2014, the Fund entered into foreign currency exchange contracts to fix the U.S. dollar value of a security between trade date and settlement date, and hedge the U.S dollar value of securities it already owns that are denominated in foreign currencies.

**Futures Contracts** A futures contract is an agreement in which the writer (or seller) of the contract agrees to deliver to the buyer an amount of cash or securities equal to a specific dollar amount times the difference between the value of a specific security or index at the close of the last trading day of the contract and the price at which the agreement is made. The Fund may use futures in the normal course of pursuing

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its investment objectives. The Fund may invest in futures contracts to hedge its existing portfolio securities against fluctuations in fair value caused by changes in interest rates or market conditions. Upon entering into a futures contract, the Fund deposits cash or pledges U.S. government securities to a broker, equal to the minimum initial margin requirements of the exchange on which the contract is traded. Subsequent payments are received from the broker or paid to the broker each day, based on the daily fluctuation in the market value of the contract. These receipts or payments are known as variation margin and are recorded daily by the Fund as unrealized gains or losses until the contracts are closed. When the contracts are closed, the Fund records a realized gain or loss equal to the difference between the value of the contract at the time it was opened and the value at the time it was closed. Risks of entering into futures contracts include potential imperfect correlation between the futures contracts and the underlying securities and the possibility of an illiquid secondary market for these instruments. When investing in futures, there is reduced counterparty credit risk to the Fund because futures are exchange-traded and the exchange's clearinghouse, as counterparty to all exchange-traded futures, guarantees against default. The Fund posted \$20,000 in securities collateral for open futures contracts, which is presented on the Schedule of investments.

During the year ended Nov. 30, 2014, the Fund used futures contracts to hedge the Fund's existing portfolio securities against fluctuations in value caused by changes in interest rates or market conditions, and to hedge currency risks associated with the Fund's investments.

**Options Contracts** The Fund may enter into options contracts in the normal course of pursuing its investment objectives. The Fund may buy or write options contracts for any number of reasons, including without limitation: to manage the Fund's exposure to changes in securities prices caused by interest rates or market conditions and foreign currencies; to earn income; as an efficient means of adjusting the Fund's overall exposure to certain markets; to protect the value of portfolio securities; and as a cash management tool. The Fund may buy or write call or put options on securities, futures, swaps, swaptions, financial indices, and foreign currencies. When the Fund buys an option, a premium is paid and an asset is recorded and adjusted on a daily basis to reflect the current market value of the option purchased. When the Fund writes an option, a premium is received and a liability is recorded and adjusted on a daily basis to reflect the current market value of the option written. Premiums received from writing options that expire unexercised are treated by the Fund on the expiration date as realized gains. The difference between the premium received and the amount paid on effecting a closing purchase transaction, including brokerage commissions, is treated as realized gain or loss. If a call option is exercised, the premium is added to the proceeds from the sale of the underlying security in determining whether the Fund has a realized gain or loss. If a put option is exercised, the premium reduces the cost basis of the securities purchased by the Fund. The Fund, as writer of an option, bears the market risk of an unfavorable change in the price of the security underlying the written option. When writing options, the Fund is subject to minimal counterparty risk because the counterparty is only obligated to pay premiums and does not bear the market risk of an unfavorable market change.

Transactions in options written during the year ended Nov. 30, 2014 for the Fund were as follows:

	<b>Number of contracts</b>	<b>Premiums</b>
Options outstanding at Nov. 30, 2013	89	\$ 9,940
Options written	1,137	133,302
Options terminated in closing purchase transactions	(89)	(6,111)
Options expired	(613)	(74,599)
Options exercised	(524)	(62,532)
Options outstanding at Nov. 30, 2014		\$

During the year ended Nov. 30, 2014, the Fund used options contracts to receive premiums for writing options.

**Swap Contracts** The Fund may enter into CDS contracts in the normal course of pursuing its investment objectives. The Fund may enter into CDS contracts in order to hedge against a credit event, to enhance total return or to gain exposure to certain securities or markets. The Fund will not be permitted to enter into any swap transactions unless, at the time of entering into such transactions, the unsecured long-term debt of the actual counterparty combined with any credit enhancements, is rated at least BBB- by Standard & Poor's Financial Services LLC. (S&P) or Baa3 by Moody's Investors Service, Inc. (Moody's) or is determined to be of equivalent credit quality by DMC.

**Credit Default Swaps.** A CDS contract is a risk-transfer instrument through which one party (purchaser of protection) transfers to another party (seller of protection) the financial risk of a credit event (as defined in the CDS agreement), as it relates to a particular reference security or basket of securities (such as an index). In exchange for the protection offered by the seller of protection, the purchaser of protection agrees to pay the seller of protection a periodic amount at a stated rate that is applied to the notional amount of the CDS contract. In addition, an upfront payment may be made or received by the Fund in connection with an unwinding or assignment of a CDS contract. Upon the occurrence

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Notes to financial statements

**Delaware Enhanced Global Dividend and Income Fund****8. Derivatives (continued)**

of a credit event, the seller of protection would pay the par (or other agreed-upon) value of the reference security (or basket of securities) to the counterparty. Credit events generally include, among others, bankruptcy, failure to pay, and obligation default.

During the year ended Nov. 30, 2014, the Fund entered into CDS contracts as a purchaser of protection. Periodic payments (receipts) on such contracts are accrued daily and recorded as unrealized losses (gains) on swap contracts. Upon payment (receipt), such amounts are recorded as realized losses (gains) on swap contracts. Upfront payments made or received in connection with CDS contracts are amortized over the expected life of the CDS contracts as unrealized losses (gains) on swap contracts. The change in value of CDS contracts is recorded daily as unrealized appreciation or depreciation. A realized gain or loss is recorded upon a credit event (as defined in the CDS agreement) or the maturity or termination of the agreement. Initial margin and variation margin are posted to central counterparties for CDS basket trades, as determined by the applicable central counterparty. During the year ended Nov. 30, 2014, the Fund did not enter into any CDS contracts as a seller of protection.

CDS contracts may involve greater risks than if the Fund had invested in the reference obligation directly. CDS contracts are subject to general market risk, liquidity risk, counterparty risk and credit risk. The Fund's maximum risk of loss from counterparty credit risk, either as the seller of protection or the buyer of protection, is the fair value of the contract. This risk is mitigated by (1) for bilateral swap contracts, having a netting arrangement between the Fund and the counterparty and by the posting of collateral by the counterparty to the Fund to cover the Fund's exposure to the counterparty or (2) for cleared swaps, trading these instruments through a central counterparty.

During the year ended Nov. 30, 2014, the Fund used CDS contracts to hedge against a credit event, and to enhance total return.

**Swaps Generally.** The value of open swaps may differ from that which would be realized in the event the Fund terminated its position in the contract on a given day. Risks of entering into these contracts include the potential inability of the counterparty to meet the terms of the contracts. This type of risk is generally limited to the amount of favorable movement in the value of the underlying security, instrument, or basket of instruments, if any, at the day of default. Risks also arise from potential losses from adverse market movements and such losses could exceed the unrealized amounts. No swap contracts were outstanding at Nov. 30, 2014.

The effect of derivative instruments on the Statement of operations for the year ended Nov. 30, 2014 was as follows:

	<b>Net Realized Gain (Loss) on:</b>				
	<b>Foreign Currency Exchange Contracts</b>	<b>Futures Contracts</b>	<b>Options Written</b>	<b>Swap Contracts</b>	<b>Total</b>
Foreign currency exchange	\$(120,050)	\$	\$	\$	\$(120,050)

contracts					
Equity contracts			80,710		80,710
Interest rate contracts		(44,646)			(44,646)
Credit contracts				(376)	(376)
<b>Total</b>	<b>\$ (120,050)</b>	<b>\$ (44,646)</b>	<b>\$ 80,710</b>	<b>\$ (376)</b>	<b>\$ (84,362)</b>

**Net Change in Unrealized Appreciation (Depreciation) of:**

	<b>Futures</b>	<b>Options</b>	
	<b>Contracts</b>	<b>Written</b>	<b>Total</b>
Equity contracts	\$	\$ 1,452	\$ 1,452
Interest rate contracts	(8,814)		(8,814)
<b>Total</b>	<b>\$ (8,814)</b>	<b>\$ 1,452</b>	<b>\$ (7,362)</b>

**Derivatives Generally.** The table below summarizes the average balance of derivative holdings by the Fund during the year ended Nov. 30, 2014:

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	<b>Long Derivative Volume</b>	<b>Short Derivative Volume</b>
Foreign currency exchange contracts (average cost)	USD 235,955	USD 338,718
Futures contracts (average notional value)		1,359,790
Options contracts (average notional value)		7,841
Swap contracts (average notional value)*	EUR 714	

\*Long represents buying protection and short represents selling protection.

**9. Offsetting**

In December 2011, the Financial Accounting Standards Board (FASB) issued guidance that expands current disclosure requirements on the offsetting of certain assets and liabilities. The disclosures are required for investments and derivative financial instruments subject to master netting or similar agreements which are eligible for offset on the Statement of assets and liabilities and require an entity to disclose both gross and net information about such investments and transactions in the financial statements. In January 2013, the FASB issued guidance that clarifies which investments and transactions are subject to the offsetting disclosure requirements. The scope of the disclosure requirements for offsetting is limited to derivative instruments, repurchase agreements and reverse repurchase agreements, and securities borrowing. The guidance is effective for financial statements with fiscal years beginning on or after Jan. 1, 2013, and interim periods within those fiscal years. The Fund adopted the disclosure provisions on offsetting during the current reporting period.

In order to better define its contractual rights and to secure rights that will help the Fund mitigate its counterparty risk, the Fund entered into an International Swaps and Derivatives Association, Inc. Master Agreement (ISDA Master Agreement) or a similar agreement with each of its derivative contract counterparties. An ISDA Master Agreement is a bilateral agreement between the Fund and a counterparty that governs certain over-the-counter (OTC) derivatives and foreign exchange contracts and typically contains, among other things, collateral posting items and netting provisions in the event of a default and/or termination event. Under an ISDA Master Agreement, the Fund may, under certain circumstances, offset with the counterparty certain derivative financial instruments payables and/or receivables with collateral held and/or posted and create one single net payment. The provisions of the ISDA Master Agreement typically permit a single net payment in the event of default (close-out), including the bankruptcy or insolvency of the counterparty. However, bankruptcy or insolvency laws of a particular jurisdiction may impose restrictions on or prohibitions against the right of offset in bankruptcy, insolvency, or other events.

For financial reporting purposes, the Fund does not offset derivative assets and derivative liabilities that are subject to netting arrangements on the Statement of assets and liabilities.

At Nov. 30, 2014, the Fund had the following assets and liabilities subject to offsetting provisions:

**Offsetting of Financial Assets and Liabilities and Derivative Assets and Liabilities****Master Repurchase Agreements**

		<b>Fair Value of</b>		
		<b>Repurchase Agreements</b>	<b>Non-Cash Collateral Received</b>	<b>Cash Collateral Received</b>
				<b>Net Amount<sup>(a)</sup></b>
Bank of America Merrill Lynch	\$	40,899	\$ (40,899)	\$
Bank of Montreal		13,633	(13,633)	
BNP Paribas		61,468	(61,468)	
<b>Total</b>	<b>\$</b>	<b>116,000</b>	<b>\$ (116,000)</b>	<b>\$</b>

<sup>(a)</sup>Net amount represents the receivable/(payable) that would be due from/(to) the counterparty in the event of default.

**10. Securities Lending**

The Fund, along with other funds in the Delaware Investments<sup>®</sup> Family of Funds, may lend its securities pursuant to a security lending agreement (Lending Agreement) with BNY Mellon. At the time a security is loaned, the borrower must post collateral equal to the required percentage of the market value of the loaned security, including any accrued interest. The required percentage is: (1) 102% with respect to U.S. securities and foreign securities that are denominated and payable in U.S. dollars; and (2) 105% with respect to foreign securities. With respect

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**Delaware Enhanced Global Dividend and Income Fund**

**10. Securities Lending (continued)**

to each loan, if on any business day the aggregate market value of securities collateral plus cash collateral held is less than the aggregate market value of the securities which are the subject of such loan, the borrower will be notified to provide additional collateral by the end of the following business day which, together with the collateral already held, will be not less than the applicable initial collateral requirements for such security loan. If the aggregate market value of securities collateral and cash collateral held with respect to a security loan exceeds the applicable initial collateral requirement, upon the request of the borrower, BNY Mellon must return enough collateral to the borrower by the end of the following business day to reduce the value of the remaining collateral to the applicable initial collateral requirement for such security loan. As a result of the foregoing, the value of the collateral held with respect to a loaned security on any particular day, may be more or less than the value of the security on loan.

Cash collateral received is generally invested in the Delaware Investments Collateral Fund No. 1 (Collective Trust) established by BNY Mellon for the purpose of investment on behalf of funds managed by DMC that participate in BNY Mellon's securities lending program. The Collective Trust may invest in U.S. government securities and high-quality corporate debt, asset-backed and other money market securities, and in repurchase agreements collateralized by such securities, provided that the Collective Trust will generally have a dollar-weighted average portfolio maturity of 60 days or less. The Fund can also accept U.S. government securities and letters of credit (non-cash collateral) in connection with securities loans. In the event of default or bankruptcy by the lending agent, realization and/or retention of the collateral may be subject to legal proceedings. In the event the borrower fails to return loaned securities and the collateral received is insufficient to cover the value of the loaned securities and provided such collateral shortfall is not the result of investment losses, the lending agent has agreed to pay the amount of the shortfall to the Fund or, at the discretion of the lending agent, replace the loaned securities. The Fund continues to record dividends or interest, as applicable, on the securities loaned and is subject to changes in value of the securities loaned that may occur during the term of the loan. The Fund has the right under the Lending Agreement to recover the securities from the borrower on demand. With respect to security loans collateralized by non-cash collateral, the Fund receives loan premiums paid by the borrower. With respect to security loans collateralized by cash collateral, the earnings from the collateral investments are shared among the Fund, the security lending agent, and the borrower. The Fund records security lending income net of allocations to the security lending agent, and the borrower.

The Collective Trust used for the investment of cash collateral received from borrowers of securities seeks to maintain a net asset value per unit of \$1.00, but there can be no assurance that it will always be able to do so. The Fund may incur investment losses as a result of investing securities lending collateral in the Collective Trust or another collateral investment pool. This could occur if an investment in a collateral investment pool defaulted or if it were necessary to liquidate assets in the collateral investment pool to meet returns on outstanding security loans at a time when the collateral investment pool's net asset value per unit was less than \$1.00. Under those circumstances, the Fund may not receive an amount from the collateral investment pool that is equal in amount to the collateral the Fund would be required to return to the borrower of the securities and the Fund would be required to make up for this shortfall.

At Nov. 30, 2014, the value of securities on loan was \$17,326,237, for which the Fund received collateral, comprised of non-cash collateral (U.S. government securities) valued at \$3,783,418, and cash collateral of \$14,496,291. At Nov. 30, 2014, the value of invested collateral was \$14,496,291. Investments purchased with cash collateral are presented on the Schedule of investments under the caption Securities Lending Collateral.



## **11. Credit and Market Risk**

The Fund borrows through its line of credit for purposes of leveraging. Leveraging may result in higher degrees of volatility because the Fund's net asset value could be subject to fluctuations in short-term interest rates and changes in market value of portfolio securities attributable to the leverage.

Some countries in which the Fund may invest require governmental approval for the repatriation of investment income, capital, or the proceeds of sales of securities by foreign investors. In addition, if there is deterioration in a country's balance of payments or for other reasons, a country may impose temporary restrictions on foreign capital remittances abroad.

The securities exchanges of certain foreign markets are substantially smaller, less liquid and more volatile than the major securities markets in the United States. Consequently, acquisition and disposition of securities by the Fund may be inhibited. In addition, a significant portion of the aggregate market value of securities listed on the major securities exchanges in emerging markets is held by a smaller number of investors. This may limit the number of shares available for acquisition or disposition by the Fund.

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The Fund invests in certain obligations that may have liquidity protection designed to ensure that the receipt of payments due on the underlying security is timely. Such protection may be provided through guarantees, insurance policies, or letters of credit obtained by the issuer or sponsor through third parties, through various means of structuring the transaction or through a combination of such approaches. The Fund will not pay any additional fees for such credit support, although the existence of credit support may increase the price of a security.

The Fund invests in bank loans and other securities that may subject it to direct indebtedness risk, the risk that the Fund will not receive payment of principal, interest, and other amounts due in connection with these investments and will depend primarily on the financial condition of the borrower. Loans that are fully secured offer the Fund more protection than unsecured loans in the event of nonpayment of scheduled interest or principal, although there is no assurance that the liquidation of collateral from a secured loan would satisfy the corporate borrower's obligation, or that the collateral can be liquidated. Some loans or claims may be in default at the time of purchase. Certain of the loans and the other direct indebtedness acquired by the Fund may involve revolving credit facilities or other standby financing commitments that obligate the Fund to pay additional cash on a certain date or on demand. These commitments may require the Fund to increase its investment in a company at a time when the Fund might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). To the extent that the Fund is committed to advance additional funds, it will at all times hold and maintain cash or other high grade debt obligations in an amount sufficient to meet such commitments.

As the Fund may be required to rely upon another lending institution to collect and pass on to the Fund amounts payable with respect to the loan and to enforce the Fund's rights under the loan and other direct indebtedness, an insolvency, bankruptcy, or reorganization of the lending institution may delay or prevent the Fund from receiving such amounts. The highly leveraged nature of many loans may make them especially vulnerable to adverse changes in economic or market conditions. Investments in such loans and other direct indebtedness may involve additional risk to the Fund.

The Fund invests a portion of its assets in high yield fixed income securities, which are securities rated BB or lower by S&P and Ba or lower by Moody's, or similarly rated by another nationally recognized statistical rating organization. Investments in these higher yielding securities are generally accompanied by a greater degree of credit risk than higher rated securities. Additionally, lower rated securities may be more susceptible to adverse economic and competitive industry conditions than investment grade securities.

The Fund invests in fixed income securities whose value is derived from an underlying pool of mortgages or consumer loans. The value of these securities is sensitive to changes in economic conditions, including delinquencies and/or defaults, and may be adversely affected by shifts in the market's perception of the issuers and changes in interest rates. Investors receive principal and interest payments as the underlying mortgages and consumer loans are paid back. Some of these securities are collateralized mortgage obligations (CMOs). CMOs are debt securities issued by U.S. government agencies or by financial institutions and other mortgage lenders, which are collateralized by a

pool of mortgages held under an indenture. Prepayment of mortgages may shorten the stated maturity of the obligations and can result in a loss of premium, if any has been paid. Certain of these securities may be stripped (securities which provide only the principal or interest feature of the underlying security). The yield to maturity on an interest-only CMO is extremely sensitive not only to changes in prevailing interest rates, but also to the rate of principal payments (including prepayments) on the related underlying mortgage assets. A rapid rate of principal payments may have a material adverse effect on the Fund's yield to maturity. If the underlying mortgage assets experience greater-than-anticipated prepayments of principal, the Fund may fail to fully recoup its initial investment in these securities even if the securities are rated in the highest rating categories.

The Fund invests in REITs and is subject to the risks associated with that industry. If the Fund holds real estate directly as a result of defaults or receives rental income directly from real estate holdings, its tax status as a regulated investment company may be jeopardized. There were no direct real estate holdings during the year ended Nov. 30, 2014. The Fund's REIT holdings are also affected by interest rate changes, particularly if the REITs it holds use floating rate debt to finance their ongoing operations.

The Fund may invest up to 10% of its net assets in illiquid securities, which may include securities with contractual restrictions on resale, securities exempt from registration under Rule 144A of the Securities Act of 1933, as amended, and other securities which may not be readily marketable. The relative illiquidity of these securities may impair the Fund from disposing of them in a timely manner and at a fair price when it is necessary or desirable to do so. While maintaining oversight, the Fund's Board has delegated to DMC, the day-to-day functions of determining whether individual securities are liquid for purposes of the Fund's limitation on investments in illiquid securities. Securities eligible for resale pursuant to Rule 144A, which are determined to be liquid, are not subject to the Fund's 10% limit on investments in illiquid securities. Rule 144A and illiquid securities have been identified on the Schedule of investments.

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**Delaware Enhanced Global Dividend and Income Fund**

**12. Contractual Obligations**

The Fund enters into contracts in the normal course of business that contain a variety of indemnifications. The Fund's maximum exposure under these arrangements is unknown. However, the Fund has not had prior claims or losses pursuant to these contracts. Management has reviewed the Fund's existing contracts and expects the risk of loss to be remote.

**13. Recent Accounting Pronouncements**

In June 2014, the FASB issued guidance to improve the financial reporting of reverse repurchase agreements and other similar transactions. The guidance includes expanded disclosure requirements for entities that enter into reverse repurchase agreements and similar transactions accounted for as secured borrowings. The guidance is effective for financial statements with fiscal years beginning on or after Dec. 15, 2014 and interim periods within those fiscal years. Management is evaluating the impact, if any, of this guidance on the Fund's financial statement disclosures.

**14. Subsequent Events**

Management has determined that no material events or transactions occurred subsequent to Nov. 30, 2014 that would require recognition or disclosure in the Fund's financial statements.

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Report of independent  
registered public accounting firm

To the Board of Trustees and Shareholders of Delaware Enhanced Global Dividend and Income Fund:

In our opinion, the accompanying statement of assets and liabilities, including the schedule of investments, and the related statements of operations, of changes in net assets, and of cash flows and the financial highlights present fairly, in all material respects, the financial position of Delaware Enhanced Global Dividend and Income Fund (the Fund ) at November 30, 2014, the results of its operations and its cash flows for the year then ended, the changes in its net assets for each of the two years in the period then ended and the financial highlights for each of the five years in the period then ended, in conformity with accounting principles generally accepted in the United States of America. These financial statements and financial highlights (hereafter referred to as financial statements ) are the responsibility of the Fund s management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits, which included confirmation of securities at November 30, 2014 by correspondence with the custodian and brokers, and the application of alternative auditing procedures where confirmations of security purchases had not been received, provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP

Philadelphia, Pennsylvania

January 22, 2015

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Other Fund information (Unaudited)

Delaware Enhanced Global Dividend and Income Fund

**Proxy results****Annual meeting**

The Fund held its Annual Meeting of Shareholders on Aug. 21, 2014. At the Annual Meeting, the Fund's shareholders elected 9 Trustees. The results of the voting at the meeting were as follows:

Nominee	Shares Voted For	Shares Withheld	No Ballot Received
Patrick P. Coyne	13,657,673.839	253,055.048	1,952,886.792
Thomas L. Bennett	13,650,554.839	260,174.048	1,952,886.792
John A. Fry	13,645,006.839	265,722.048	1,952,886.792
Lucinda S. Landreth	13,637,520.839	273,208.048	1,952,886.792
Joseph W. Chow	13,638,328.839	272,400.048	1,952,886.792
Frances Sevilla-Sacasa	13,642,701.839	268,027.048	1,952,886.792
Janet L. Yeomans	13,621,593.839	289,135.048	1,952,886.792
J. Richard Zecher	13,638,293.084	272,435.803	1,952,886.792
Thomas K. Whitford	13,654,788.839	255,940.048	1,952,886.792

**Changes to portfolio management team**

Christopher M. Testa was appointed as a co-portfolio manager of the Fund on June 19, 2014. Mr. Testa joined Babak Zenouzi, Damon J. Andres, D. Tysen Nutt Jr., Edward A. Ned Gray, Liu-Er Chen, Wayne A. Anglace, Roger A. Early, Paul A. Matlack, Craig C. Dembek, and John P. McCarthy in making day-to-day decisions for the Fund.

On Nov. 6, 2014, the Fund announced that Thomas H. Chow would no longer serve as a co-portfolio manager of the Fund.

**Fund management****Babak Bob Zenouzi**

*Senior Vice President, Chief Investment Officer – Real Estate Securities and Income Solutions (RESIS)*

Bob Zenouzi is the lead manager for the real estate securities and income solutions (RESIS) group at Delaware Investments, which includes the team, its process, and its institutional and retail products, which he created during his prior time with the firm. He also focuses on opportunities in Japan, Singapore, and Malaysia for the firm's global REIT product. Additionally, he serves as lead portfolio manager for the firm's Dividend Income products, which he helped to create in the 1990s. He is also a member of the firm's asset allocation committee, which is responsible for building and managing multi-asset class portfolios. He rejoined Delaware Investments in May 2006 as senior portfolio manager and head of real estate securities. In his first term with the firm, he spent seven years as an analyst and portfolio manager, leaving in 1999 to work at Chartwell Investment Partners, where from 1999 to 2006 he was a partner and senior portfolio manager on Chartwell's Small-Cap Value portfolio. He began his career with The Boston Company,

where he held several positions in accounting and financial analysis. Zenouzi earned a master's degree in finance from Boston College and a bachelor's degree in finance from Babson College. He is a member of the National Association of Real Estate Investment Trusts and the Urban Land Institute.

Mr. Zenouzi has been a co-portfolio manager of the Fund since June 2007.

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**D. Tysen Nutt Jr.**

*Senior Vice President, Senior Portfolio Manager, Team Leader*

D. Tysen Nutt Jr. is senior portfolio manager and team leader for the firm's Large-Cap Value team. Before joining Delaware Investments in 2004 as senior vice president and senior portfolio manager, Nutt led the U.S. Active Large-Cap Value team within Merrill Lynch Investment Managers, where he managed mutual funds and separate accounts for institutions and private clients. He departed Merrill Lynch Investment Managers as a managing director. Prior to joining Merrill Lynch Investment Managers in 1994, Nutt was with Van Deventer & Hoch where he managed large-cap value portfolios for institutions and private clients. He began his investment career at Dean Witter Reynolds, where he eventually became vice president, investments. Nutt earned his bachelor's degree from Dartmouth College, and he is a member of the New York Society of Security Analysts and the CFA Institute.

Mr. Nutt has been a co-portfolio manager of the Fund since June 2007.

**Damon J. Andres, CFA**

*Vice President, Senior Portfolio Manager*

Damon J. Andres, who joined Delaware Investments in 1994 as an analyst, currently serves as a portfolio manager for the firm's real estate securities and income solutions (RESIS) group. He also serves as a portfolio manager for the firm's Dividend Income products. From 1991 to 1994, he performed investment-consulting services as a consulting associate with Cambridge Associates. Andres earned a bachelor's degree in business administration with an emphasis in finance and accounting from the University of Richmond.

Mr. Andres has been a co-portfolio manager of the Fund since June 2007.

**Edward A. Ned Gray, CFA**

*Senior Vice President, Chief Investment Officer – Global and International Value Equity*

Ned Gray manages the Global and International Value Equity strategies and has worked with the investment team for more than 20 years. Prior to joining Delaware Investments in June 2005 in his current position, Gray worked with the team as a portfolio manager at Arborway Capital and Thomas Weisel Partners. At ValueQuest/TA, which he joined in 1987, Gray was a senior investment professional with responsibilities for portfolio management, security analysis, quantitative research, performance analysis, global research, back office/investment information systems integration, trading, and client and consultant relations. Prior to ValueQuest, he was a research analyst at the Center for Competitive Analysis. Gray received his bachelor's degree in history from Reed College and a master of arts in law



and diplomacy, in international economics, business and law from Tufts University's Fletcher School of Law and Diplomacy.

Mr. Gray has been a co-portfolio manager of the Fund since July 2008.

**Liu-Er Chen, CFA**

*Senior Vice President, Chief Investment Officer – Emerging Markets and Healthcare*

Liu-Er Chen heads the firm's global Emerging Markets team, and he is also the portfolio manager for Delaware Healthcare Fund, which launched in September 2007. Prior to joining Delaware Investments in September 2006 in his current position, he spent nearly 11 years at Evergreen Investment Management Company, where he most recently worked as managing director and senior portfolio manager. He co-managed the Evergreen Emerging Markets Growth Fund from 1999 to 2001, and became the Fund's sole manager in 2001. He was also the sole manager of the Evergreen Health Care Fund since its inception in 1999. Chen began his career at Evergreen in 1995 as an analyst covering Asian and global healthcare stocks, before being promoted to portfolio manager in 1998. Prior to his career in asset management, Chen worked for three years in sales, marketing, and business development for major American and European pharmaceutical and medical device companies. He received his medical education in China and he has experience in medical research at both the Chinese Academy of Sciences and Cornell Medical School. He holds an MBA with a concentration in management from Columbia Business School.

Mr. Chen has been a co-portfolio manager of the Fund since June 2007.

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Other Fund information (Unaudited)

**Fund management (continued)**

**Roger A. Early, CPA, CFA**

*Managing Director, Co-Head of Fixed Income Investments, Senior Vice President, Co-Chief Investment Officer  
Total Return Fixed Income Strategy*

Roger A. Early rejoined Delaware Investments in March 2007 as a member of the firm's taxable fixed income portfolio management team, with primary responsibility for portfolio construction and strategic asset allocation. He became co-head of the team in December 2014. During his previous time at the firm, from 1994 to 2001, he was a senior portfolio manager in the same area, and he left Delaware Investments as head of its U.S. investment grade fixed income group. In recent years, Early was a senior portfolio manager at Chartwell Investment Partners and Rittenhouse Financial and was the chief investment officer for fixed income at Turner Investments. Prior to joining Delaware Investments in 1994, he worked for more than 10 years at Federated Investors where he managed more than \$25 billion in mutual fund and institutional portfolios in the short-term and investment grade markets. He left the firm as head of institutional fixed income management. Earlier in his career, he held management positions with the Federal Reserve Bank, PNC Financial, Touche Ross, and Rockwell International. Early earned his bachelor's degree in economics from The Wharton School of the University of Pennsylvania and an MBA with concentrations in finance and accounting from the University of Pittsburgh. He is a member of the CFA Society of Philadelphia.

Mr. Early has been a co-portfolio manager of the Fund since January 2008.

**Wayne A. Anglace, CFA**

*Vice President, Senior Portfolio Manager*

Wayne A. Anglace currently serves as a senior portfolio manager for the firm's convertible bond strategies. Prior to joining the firm in March 2007 as a research analyst and trader, he spent more than two years as a research analyst at Gartmore Global Investments for its convertible bond strategy. From 2000 to 2004, Anglace worked in private client research at Deutsche Bank Alex. Brown in Baltimore where he focused on equity research, and he started his financial services career with Ashbridge Investment Management in 1999. Prior to moving to the financial industry, Anglace worked as a professional civil engineer. He earned his bachelor's degree in civil engineering from Villanova University and an MBA with a concentration in finance from Saint Joseph's University, and he is a member of the CFA Society of Philadelphia.

Mr. Anglace has been a co-portfolio manager of the Fund since March 2010.

**Paul A. Matlack, CFA**

*Senior Vice President, Senior Portfolio Manager, Fixed Income Strategist*

Paul A. Matlack is a strategist and senior portfolio manager for the firm's fixed income team. Matlack rejoined the firm in May 2010. During his previous time at Delaware Investments, from September 1989 to October 2000, he was senior credit analyst, senior portfolio manager, and left the firm as co-head of the high yield group. Most recently, he worked at Chartwell Investment Partners from September 2003 to April 2010 as senior portfolio manager in fixed income, where he managed core, core plus, and high yield strategies. Prior to that, Matlack held senior roles at Turner Investment Partners, PNC Bank, and Mellon Bank. He earned a bachelor's degree in international relations from the University of Pennsylvania and an MBA with a concentration in finance from George Washington University.

Mr. Matlack has been a co-portfolio manager of the Fund since December 2012.

**Craig C. Dembek, CFA**

*Senior Vice President, Co-Head of Credit Research, Senior Research Analyst*

Craig C. Dembek is co-head of credit research and senior research analyst on the firm's taxable fixed income team with primary responsibility for banks, brokers, insurance companies, and real estate investment trusts (REITs), as well as oversight for other sectors. He rejoined the firm in March 2007. During his previous time at Delaware Investments, from April 1999 to January 2001, he was a senior investment grade credit analyst. Most recently, he spent four years at Chartwell Investment Partners as a senior fixed income analyst and Turner Investment Partners as a senior fixed income analyst and portfolio manager. Dembek also spent two years at Stein, Roe & Farnham as a senior fixed income analyst. Earlier in his career, he worked for two years as a lead bank analyst at the Federal Reserve Bank of Boston. Dembek earned a bachelor's degree in finance from Michigan State University and an MBA with a concentration in finance from the University of Vermont.

Mr. Dembek has been a co-portfolio manager of the Fund since December 2012.

**Table of Contents****John P. McCarthy, CFA***Senior Vice President, Co-Head of Credit Research, Senior Research Analyst*

John P. McCarthy is co-head of credit research and senior research analyst on the firm's taxable fixed income team, responsible for industrials, steel, metals, and mining. He rejoined Delaware Investments in March 2007 after he worked in the firm's fixed income area from 1990 to 2000 as a senior high yield analyst and high yield trader, and from 2001 to 2002 as a municipal bond trader. Most recently, he was a senior high yield analyst/trader at Chartwell Investment Partners. McCarthy earned a bachelor's degree in business administration from Babson College, and he is a member of the CFA Society of Philadelphia.

Mr. McCarthy has been a co-portfolio manager of the Fund since December 2012.

**Christopher M. Testa, CFA***Senior Vice President, Senior Portfolio Manager*

Christopher M. Testa joined Delaware Investments in January 2014 as a senior portfolio manager in the firm's corporate credit portfolio management group. He manages both investment grade and high yield corporate credit. Prior to joining the firm, Testa worked as a portfolio manager who focused on high yield credit at S. Goldman Asset Management from 2009 to 2012 and Princeton Advisory Group from 2012 to 2013. Previously, he served as head of U.S. credit at Drake Management, and prior to that he was head of credit research and a high yield portfolio manager at Goldman Sachs Asset Management. Testa has more than 20 years of experience analyzing and investing in high yield and distressed credit. He earned his bachelor's degree in economics, with a minor in government, from Hamilton College, and an MBA in finance with a concentration in investments from The Wharton School of the University of Pennsylvania.

Mr. Testa has been a co-portfolio manager of the Fund since June 2014.

**Distribution information**

Shareholders were sent monthly notices from the Fund that set forth estimates, on a book basis, of the source or sources from which monthly distributions were paid. Subsequently, certain of these estimates have been revised in part. Listed below is a written statement of the sources of these monthly distributions on a book basis.

Month	Investment Income per Share	Return of Capital per Share	Long Term Capital Gain/(Loss) per Share	Total Distribution Amount per Share
December 2013	\$ 0.0423	\$ 0.0327	\$	\$ 0.0750

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January 2014	0.0316	0.0434	0.0750
February 2014	0.0725	0.0025	0.0750
March 2014	0.0574	0.0176	0.0750
April 2014	0.0419	0.0331	0.0750
May 2014	0.0695	0.0055	0.0750
June 2014	0.0707	0.0043	0.0750
July 2014	0.0443	0.0307	0.0750
August 2014	0.0422	0.0328	0.0750
September 2014	0.0519	0.0231	0.0750
October 2014	0.0335	0.0415	0.0750
November 2014	0.0456	0.0294	0.0750
<b>Total</b>	<b>\$ 0.6034</b>	<b>\$ 0.2966</b>	<b>\$ 0.9000</b>

Please note that the information in the preceding chart is for book purposes only. Shareholders should be aware that the tax treatment of distributions may differ from their book treatment. For federal income tax purposes, the effect of capital loss carryovers may be to convert (to the extent of such current year gains) what would otherwise be returns of capital into distributions taxable as ordinary income. Under the Regulated Investment Company Modernization Act of 2010 (Act), this tax effect attributable to the Fund's capital loss carryovers (the conversion of returns of capital into distributions taxable as ordinary income) will no longer apply to net capital losses of the Fund arising in Fund tax years beginning after the date of the enactment. The tax treatment of distributions will be set forth in a Form 1099-DIV.

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Other Fund information (Unaudited)

### **Dividend reinvestment plan**

The Fund offers an automatic dividend reinvestment plan. The following is a restatement of the plan description in the Fund's prospectus:

Unless the registered owner of the Fund's common shares elects to receive cash by contacting the Plan Agent (as defined below), all dividends declared for your common shares of the Fund will be automatically reinvested by Computershare, Inc. (the Plan Agent), agent for shareholders in administering the Fund's Dividend Reinvestment Plan (the Plan), in additional common shares of the Fund. If a registered owner of common shares elects not to participate in the Plan, you will receive all dividends in cash paid by the Plan Agent, as dividend disbursing agent, by check mailed directly to you (or, if the shares are held in street or other nominee name, then to such nominee), or by ACH if you so elect by contacting the Plan Agent. You may elect not to participate in the Plan and to receive all dividends in cash by sending written instructions or by contacting the Plan Agent, as dividend disbursing agent, at the address set forth below. Participation in the Plan is completely voluntary and may be terminated or resumed at any time without penalty by contacting the Plan Agent before the dividend record date; otherwise such termination or resumption will be effective with respect to any subsequently declared dividend or other distribution. Some brokers may automatically elect to receive cash on your behalf and may re-invest that cash in additional common shares of the Fund for you. If you wish for all dividends declared on your common shares of the Fund to be automatically reinvested pursuant to the Plan, please contact your broker.

The Plan Agent will open an account for each common shareholder under the Plan in the same name in which such shareholder's common shares are registered. Whenever the Fund declares a dividend or other distribution (together, a dividend) payable in cash, non-participants in the Plan will receive cash and participants in the Plan will receive the equivalent in common shares. The common shares will be acquired by the Plan Agent for the participants' accounts, depending upon the circumstances described below, either (i) through receipt of additional unissued but authorized common shares from the Fund (newly issued common shares) or (ii) by purchase of outstanding common shares on the open market (open-market purchases) on the New York Stock Exchange or elsewhere.

If, on the payment date for any dividend, the market price per common share plus estimated brokerage commissions is greater than the net asset value per common share (such condition being referred to herein as market premium), the Plan Agent will invest the dividend amount in newly issued common shares, including fractions, on behalf of the participants. The number of newly issued common shares to be credited to each participant's account will be determined by dividing the dollar amount of the dividend by the net asset value per common share on the payment date; provided that, if the net asset value per common share is less than 95% of the market price per common share on the payment date, the dollar amount of the dividend will be divided by 95% of the market price per common share on the payment date.

If, on the payment date for any dividend, the net asset value per common share is greater than the market value per common share plus estimated brokerage commissions (such condition being referred to herein as market discount), the Plan Agent will invest the dividend amount in common shares acquired on behalf of the participants in open-market purchases.

In the event of a market discount on the payment date for any dividend, the Plan Agent will have until the last business day before the next date on which the common shares trade on an ex-dividend basis or 30 days after the payment date for such dividend, whichever is sooner (the last purchase date), to invest the dividend amount in common shares acquired in open-market purchases. It is contemplated that the Fund will pay monthly dividends. Therefore, the period during which open-market purchases can be made will exist only from the payment date of each dividend through the date before the next ex-dividend date. If, before the Plan Agent has completed its open-market purchases, the market price of a common share exceeds the net asset value per common share, the average per common share purchase price paid by the Plan Agent may exceed the net asset value of the common shares, resulting in the acquisition of fewer common shares than if the dividend had been paid in newly issued common shares on the dividend payment date. Because of the foregoing difficulty with respect to open market purchases, if the Plan Agent is unable to invest the full dividend amount in open market purchases during the purchase period or if the market discount shifts to a market premium during the purchase period, the Plan Agent may cease making open-market purchases and may invest the uninvested portion of the dividend amount in newly issued common shares at the net asset value per common share at the close of business on the last purchase date; provided that, if the net asset value per common share is less than 95% of the market price per common share on the payment date, the dollar amount of the dividend will be divided by 95% of the market price per common share on the payment date.

The Plan Agent maintains all shareholders' accounts in the Plan and furnishes written confirmation of all transactions in the accounts, including information needed by shareholders for tax records. Common shares in the account of each Plan participant will be held by the Plan Agent on

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behalf of the Plan participant, and each shareholder proxy will include those shares purchased or received pursuant to the Plan. The Plan Agent will forward all proxy solicitation materials to participants and vote proxies for shares held under the Plan in accordance with the instructions of the participants.

In the case of shareholders such as banks, brokers or nominees which hold shares for others who are the beneficial owners, the Plan Agent will administer the Plan on the basis of the number of common shares certified from time to time by the record shareholder's name and held for the account of beneficial owners who participate in the Plan.

There will be no brokerage charges with respect to common shares issued directly by the Fund. However, each participant will pay a pro rata share of brokerage commissions incurred in connection with open-market purchases. The automatic reinvestment of dividends will not relieve participants of any U.S. federal, state or local income tax that may be payable (or required to be withheld) on such dividends. Participants that request a sale of shares through the Plan Agent are subject to a \$15.00 sales fee and a brokerage commission of \$.12 per share sold.

The Fund reserves the right to amend or terminate the Plan. There is no direct service charge to participants in the Plan; however, the Fund reserves the right to amend the Plan to include a service charge payable by the participants.

All correspondence concerning the Plan should be directed to the Plan Agent at Computershare, Inc., P.O. Box 30170, College Station, TX 77842-3170; telephone: 866 437-0252.

**Tax information**

The information set forth below is for the Fund's fiscal year as required by federal income tax laws. Shareholders, however, must report distributions on a calendar year basis for income tax purposes, which may include distributions for portions of two fiscal years of the Fund. Accordingly, the information needed by shareholders for income tax purposes will be sent to them in January of each year. Please consult your tax advisor for proper treatment of this information.

All disclosures are based on financial information available as of the date of this annual report and, accordingly are subject to change. For any and all items requiring reporting, it is the intention of the Fund to report the maximum amount permitted under the Internal Revenue Code and the regulations thereunder.

For the fiscal year ended Nov. 30, 2014, the Fund reports distributions paid during the year as follows:

(A)	(B)
Ordinary	Qualifying



Income Distributions* (Tax Basis)	Dividends <sup>1</sup>
100.00%	19.00%

(A) is based on a percentage of the Fund's total distributions.

(B) is based on a percentage of the Fund's ordinary income distributions.

<sup>1</sup>Qualifying dividends represent dividends which qualify for the corporate dividends received deduction.

\*For the fiscal year ended Nov. 30, 2014, certain dividends paid by the Fund may be subject to a maximum tax rate of 20%. The percentage of dividends paid by the Fund from ordinary income reported as qualified dividend income is 58.64%. Complete information will be computed and reported in conjunction with your 2014 Form 1099-DIV.

**Board consideration of Delaware Enhanced Global Dividend and Income Fund investment management agreement**

At a meeting held on Aug. 19-21, 2014 (the Annual Meeting), the Board of Trustees (the Board), including a majority of disinterested or independent Trustees, approved the renewal of the Investment Management Agreement for Delaware Enhanced Global Dividend and Income Fund (the Fund). In making its decision, the Board considered information furnished at regular quarterly Board meetings, including reports detailing Fund performance, investment strategies and expenses, as well as information prepared specifically in connection with the renewal of the investment advisory and sub-advisory contracts. Information furnished specifically in connection with the renewal of the Investment Management Agreement with Delaware Management Company (DMC) included materials provided by DMC and its affiliates (Delaware

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Other Fund information (Unaudited)

**Board consideration of Delaware Enhanced Global Dividend and Income Fund investment management agreement (continued)**

Investments ) concerning, among other things, the nature, extent and quality of services provided to the Fund, the costs of such services to the Fund, economies of scale and the financial condition and profitability of Delaware Investments. In addition, in connection with the Annual Meeting, reports were provided to the Trustees in May 2014 and included reports provided by Lipper, Inc., an independent statistical compilation organization ( Lipper ). The Lipper reports compared the Fund s investment performance and expenses with those of other comparable mutual funds. The Independent Trustees reviewed and discussed the Lipper reports with independent legal counsel to the Independent Trustees. The Board requested and received information regarding DMC s policy with respect to advisory fee levels and its breakpoint philosophy; the structure of portfolio manager compensation; the investment manager s profitability; comparative client fee information; and any constraints or limitations on the availability of securities for certain investment styles, which had in the past year inhibited, or which were likely in the future to inhibit, DMC s ability to invest fully in accordance with Fund policies.

In considering information relating to the approval of the Fund s advisory agreement, the Independent Trustees received assistance and advice from and met separately with independent legal counsel to the Independent Trustees. Although the Board gave attention to all information furnished, the following discussion identifies, under separate headings, the primary factors taken into account by the Board during its contract renewal considerations.

**Nature, Extent and Quality of Service.** The Board considered the services provided by Delaware Investments to the Fund and its shareholders. In reviewing the nature, extent and quality of services, the Board considered reports furnished to it throughout the year, which covered matters such as the relative performance of the Fund, compliance of portfolio managers with the investment policies, strategies and restrictions for the Fund, compliance by DMC ( Management ) personnel with the Code of Ethics adopted throughout the Delaware Investment Family of Funds complex and adherence to fair value pricing procedures as established by the Board. The Board was pleased with the current staffing of the Fund s investment manager and the emphasis placed on research in the investment process. The Board recognized DMC s receipt of several industry distinctions. The Board gave favorable consideration to DMC s efforts to control expenditures while maintaining service levels committed to Fund matters. The Board was satisfied with the nature, extent and quality of the overall services provided by Delaware Investments.

**Investment Performance.** The Board placed significant emphasis on the investment performance of the Fund in view of the importance of investment performance to shareholders. Although the Board gave appropriate consideration to performance reports and discussions with portfolio managers at Board meetings throughout the year, the Board gave particular weight to the Lipper reports furnished for the Annual Meeting. The Lipper reports prepared for the Fund showed the investment performance of its shares in comparison to a group of similar funds as selected by Lipper (the Performance Universe ). A fund with the highest performance ranked first, and a fund with the lowest ranked last. The highest/best performing 25% of funds in the Performance Universe make up the first quartile; the next 25%, the second quartile; the next 25%, the third quartile; and the lowest/worst performing 25% of funds in the Performance Universe make up the fourth quartile. Comparative annualized performance for the Fund was shown for the past 1-, 3-, 5- and 10-year periods, to the extent applicable, ended March 31, 2014. The Board s objective is that the Fund s performance for the periods considered be at or above the median of its Performance Universe. The following

paragraph summarizes the performance results for the Fund and the Board's view of such performance.

The Performance Universe for the Fund consisted of the Fund and all leveraged closed-end global funds as selected by Lipper. The Lipper report comparison showed that the Fund's total return for the 1-, 3- and 5-year periods was in the second quartile of its Performance Universe. The Board was satisfied with performance.

**Comparative Expenses.** The Board considered expense comparison data for the Delaware Investments Family of Funds. Management provided the Board with information on pricing levels and fee structures for the Fund as of its most recently completed fiscal year. The Board also focused on the comparative analysis of effective management fees and total expense ratios of the Fund versus effective management fees and expense ratios of a group of similar closed-end funds as selected by Lipper (the Expense Group). In reviewing comparative costs, the Fund's contractual management fee and the actual management fee incurred by the Fund were compared with the contractual management fees (assuming all funds in the Expense Group were similar in size to the Fund) and actual management fees (as reported by each fund) within the Expense Group, taking into account any applicable breakpoints and fee waivers. The Fund's total expenses were also compared with those of its Expense Group. The Board considered fees paid to Delaware Investments for non-management services. The Board's objective is to limit

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the Fund's total expense ratio to be competitive with that of the Expense Group. The following paragraph summarizes the expense results for the Fund and the Board's view of such expenses.

The expense comparisons for the Fund showed that its actual management fee was in the quartile with the highest expenses of its Expense Group and its total expenses were in the quartile with the second highest expenses of its Expense Group. The Fund's total expenses were not in line with the Board's objective. In evaluating total expenses, the Board considered the Fund's reorganization in 2013. The Board was satisfied with Management's efforts to improve the Fund's total expense ratio and to bring it in line with the Board's objective.

**Management Profitability.** The Board considered the level of profits, if any, realized by Delaware Investments in connection with the operation of the Fund. In this respect, the Board reviewed the Investment Management Profitability Analysis that addressed the overall profitability of Delaware Investments' business in providing management and other services to each of the individual funds and the Delaware Investments® Family of Funds as a whole. Specific attention was given to the methodology followed in allocating costs for the purpose of determining profitability. Management stated that the level of profits of Delaware Investments, to a certain extent, reflects recent operational cost savings and efficiencies initiated by Delaware Investments. The Board considered Delaware Investments' efforts to improve services provided to fund shareholders and to meet additional regulatory and compliance requirements resulting from recent industry-wide Securities and Exchange Commission initiatives. The Board also considered the extent to which Delaware Investments might derive ancillary benefits from fund operations, including the potential for procuring additional business as a result of the prestige and visibility associated with its role as service provider to the Delaware Investments Family of Funds and the benefits from allocation of fund brokerage to improve trading efficiencies. The Board found that the management fees were reasonable in light of the services rendered and the profitability of Delaware Investments.

**Economies of Scale.** As a closed-end fund, the Fund does not issue shares on a continuous basis. Fund assets increase only to the extent that the values of the underlying securities in the Fund increase. Accordingly, the Board determined that the Fund was not likely to experience significant economies of scale due to asset growth and, therefore, a fee schedule with breakpoints to pass the benefit of economies of scale on to shareholders was not likely to provide the intended effect.

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Board of trustees / directors and officers addendum

**Delaware Investments® Family of Funds**

A mutual fund is governed by a Board of Trustees / Directors ( Trustees ), which has oversight responsibility for the management of a fund s business affairs. Trustees establish procedures and oversee and review the performance of the investment manager, the distributor, and others who perform services for the fund. The independent fund trustees, in particular, are advocates for shareholder interests. Each trustee has served in that capacity since he or she was elected to or appointed to the Board of Trustees, and will continue to serve until his or her retirement or the election of a new trustee in his or her place. The following is a list of the Trustees and Officers with certain background and related information.

<b>Name, Address, Birth Date</b>	<b>Position(s) Held with Fund(s)</b>	<b>Length of Time Served</b>	<b>Principal Occupation(s) During the Past Five Years</b>	<b>Number of Portfolios in Fund Complex Overseen by Trustee or Officer</b>	<b>Other Director Held Trust or Of</b>
<b>Trustee</b>					
Patrick P. Coyne <sup>1</sup> Market Street Philadelphia, PA 19103 April 1963	Chairman, President, Chief Executive Officer, and Trustee	Chairman and Trustee since Aug. 16, 2006  President and Chief Executive Officer since Aug. 1, 2006	Patrick P. Coyne has served in various executive capacities at different times at Delaware Investments. <sup>2</sup>	65	Board of C Mem Investment Institute  Director a Committee Kaydon (2007
<b>Independent Trustees</b>					
L. Bennett Market Street Philadelphia, PA 19103 September 1947	Trustee	Since March 2005	Private Investor (March 2004 Present)	65	Direct Bryn Mawr (BM (2007
W. Chow Market Street Philadelphia, PA 19103 July 1953	Trustee	Since January 2013	Executive Vice President (Emerging Economies Strategies, Risk and Corporate Administration) State Street Corporation (July 2004 March 2011)	65	Director a Comm Member Technolog Capital

<p>A. Fry Market Street a, PA 19103 1960</p>	<p>Trustee</p>	<p>Since January 2001</p>	<p>President Drexel University  (August 2010 Present)  President Franklin &amp; Marshall College (July 2002 July 2010)</p>	<p>65</p>	<p>Director Hershey Comp Director Committee Govern Committee Communi System</p>
<p>S. Landreth Market Street a, PA 19103 1947</p>	<p>Trustee</p>	<p>Since March 2005</p>	<p>Private Investor (2004 Present)</p>	<p>65</p>	<p>None</p>

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Position(s) Held with Fund(s)	Length of Time Served	Principal Occupation(s) During the Past Five Years	Number of Portfolios in Fund Complex Overseen by Trustee or Officer	Other Director Held Trust or Off
...es (continued)				
...ncasa ...et ...103	Since September 2011	Chief Executive Officer Banco Itaú International (April 2012 - Present)  Executive Advisor to Dean (August 2011 - March 2012) and Interim Dean (January 2011 - July 2011) University of Miami School of Business Administration	65	Trust Man Audit Cor Member Property
	1,923			
	17,999 2,161			18,292 1,755
<b>\$ 28,863</b>			<b>\$ 53,984</b>	<b>\$ 33,279</b>

At May 25, 2003, the company's net deferred tax liability of \$25.1 million consists of \$13.8 million recorded in other accrued liabilities and \$11.2 million recorded in other noncurrent liabilities. At May 26,

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**CONAGRA FOODS CHICKEN BUSINESS**

(A Division of ConAgra Foods, Inc.)

**NOTES TO COMBINED FINANCIAL STATEMENTS**

(Columnar Dollar Amounts in Thousands)

2002, the company's net deferred tax liability of \$4.5 million consists of \$1.5 million recorded in other assets and \$6.0 million recorded in other noncurrent liabilities.

**8. DERIVATIVE FINANCIAL INSTRUMENTS**

The company is exposed to market risk such as changes in commodity prices. To manage volatility associated with commodity price exposure, the company may enter into various derivative transactions pursuant to established company policies.

**Commodity Price Management** The company is subject to raw material price fluctuations caused by supply conditions, weather, economic conditions and other factors. Generally, the company utilizes commodity futures and options contracts to reduce the volatility of commodity input prices on items such as grains, vegetable oils and energy.

Futures and options contracts qualifying for hedge accounting and used to hedge anticipated transactions are designated as cash flow hedges with gains and losses deferred in accumulated other comprehensive income, to the extent the hedge is effective. These amounts are recognized within cost of goods sold in the period during which the hedged transaction affects earnings. Any hedge gain or loss deemed ineffective, as well as gains or losses on contracts for which the company does not qualify, or elects not to qualify, for hedge accounting, are immediately recognized within sales or cost of goods sold. Amounts deferred within accumulated other comprehensive income are recognized in the combined statement of earnings in the same period during which the hedged transaction affects earnings.

**Additional Derivative Information** The fair value of derivative assets is recognized within prepaid expenses and other current assets, while the fair value of derivative liabilities is recognized within other accrued liabilities. As of May 25, 2003 and May 26, 2002, the fair value of derivatives recognized within current assets was \$2.3 million and \$1.9 million, respectively. There were no derivative liabilities as of May 25, 2003 and May 26, 2002.

For the year ended May 25, 2003 and May 26, 2002, the ineffectiveness associated with derivatives designated as both cash flow and fair value hedges was a gain of \$2.3 million and \$.5 million, respectively. Hedge ineffectiveness is recognized within cost of goods sold. The company does not exclude any components of the hedging instrument's gain or loss when assessing effectiveness.



## Edgar Filing: Delaware Enhanced Global Dividend & Income Fund - Form N-CSR

Generally, the company hedges a portion of its anticipated consumption of commodity inputs for periods up to 12 months. The company may enter into longer term hedges on particular commodities if deemed appropriate. As of May 25, 2003, the company had hedged certain portions of its anticipated consumption of commodity inputs through May 2004.

As of May 25, 2003, the net deferred gain recognized in accumulated other comprehensive income was \$1.6 million, net of tax, and at May 26, 2002 the net deferred loss recognized in accumulated other comprehensive income was \$.3 million, net of tax, which includes the impact of the cumulative effect of change in accounting principle. The entire gain deferred as of May 25, 2003 will be recognized within earnings over the next 12 months. For the year ended May 25, 2003 and May 26, 2002, a net of tax \$4.0 million gain and \$4.3 million loss, respectively, was recognized from accumulated other comprehensive income into earnings. No cash flow hedges or firm commitments were discontinued during the year ended May 25, 2003.

### **9. COMMITMENTS AND CONTINGENCIES**

The company leases certain facilities and transportation equipment under agreements that expire at various dates. Management expects that in the normal course of business, leases that expire will be renewed or replaced by other leases. Substantially all leases require payment of property taxes, insurance and

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**Index to Financial Statements**

**CONAGRA FOODS CHICKEN BUSINESS**

(A Division of ConAgra Foods, Inc.)

**NOTES TO COMBINED FINANCIAL STATEMENTS**

(Columnar Dollar Amounts in Thousands)

maintenance costs in addition to rental payments. Rent expense under all operating leases was \$20.2 million, \$21.2 million and \$19.9 million in fiscal 2003, 2002 and 2001, respectively.

A summary of noncancelable operating lease commitments for fiscal years following May 25, 2003 is as follows:

2004	\$ 2,106
2005	2,095
2006	2,188
2007	966
2008	857
Later years	5,187
	<hr/>
	\$ 13,399
	<hr/> <hr/>

The company is a party to a number of lawsuits and claims arising out of the operation of its businesses. After taking into account liabilities recorded management believes the ultimate resolution of such matters should not have a material adverse effect on the company's financial condition, results of operations or liquidity.

**10. EMPLOYEE BENEFIT PLANS**

***Retirement Pension Plan***

The company has a defined benefit retirement plan ( Plan ) for eligible salaried and hourly employees. Benefits are based on years of credited service and average compensation or stated amounts for each year of service. The company funds this plan in accordance with the minimum and maximum limits established by law. Employees of the company also participate in defined benefit and defined contribution plans sponsored by ConAgra Foods.

## Edgar Filing: Delaware Enhanced Global Dividend & Income Fund - Form N-CSR

Components of pension benefit costs and weighted average actuarial assumptions are:

	2003	2002	2001
<b>Pension Benefit Cost</b>			
Service cost	\$ 253	\$ 234	\$ 202
Interest cost	224	199	173
Expected return on plan assets	(161)	(186)	(187)
Recognized net actuarial loss			(5)
	316	247	183
Pension benefit cost    company plans	316	247	183
Pension benefit cost    multi-employer plans	6,104	4,547	3,979
	6,420	4,794	4,162
<b>Total pension benefit cost</b>	<b>\$ 6,420</b>	<b>\$ 4,794</b>	<b>\$ 4,162</b>
<b>Actuarial Assumptions</b>			
Discount rate	7.25%	7.50%	7.50%
Long-term rate of return on plan assets	7.75%	9.25%	9.25%
Long-term rate of compensation increase	5.50%	5.50%	5.50%

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**CONAGRA FOODS CHICKEN BUSINESS**

(A Division of ConAgra Foods, Inc.)

**NOTES TO COMBINED FINANCIAL STATEMENTS**

(Columnar Dollar Amounts in Thousands)

The change in projected benefit obligation, change in plan assets and funded status of the plans at February 28, 2003 and 2002:

	<u>2003</u>	<u>2002</u>
<b>Change in Projected Benefit Obligation</b>		
Projected benefit obligation at beginning of year	\$ 3,112	\$ 2,667
Service cost	253	234
Interest cost	224	199
Actuarial loss	110	77
Benefits paid	(53)	(65)
	<u>          </u>	<u>          </u>
Projected benefit obligation at end of year	\$ 3,646	\$ 3,112
	<u>          </u>	<u>          </u>
	<u>2003</u>	<u>2002</u>
<b>Change in Plan Assets</b>		
Fair value of plan assets at beginning of year	\$ 2,025	\$ 1,959
Actual return on plan assets	(176)	(7)
Employer contributions	371	166
Investment and administrative expenses	(36)	(28)
Benefits paid	(53)	(65)
	<u>          </u>	<u>          </u>
Fair value of plan assets at end of year	2,131	2,025
	<u>          </u>	<u>          </u>
<b>Funded Status</b>		
Unrecognized actuarial loss	(1,515)	(1,087)
	<u>          </u>	<u>          </u>
Accrued benefit cost	\$ (780)	\$ (835)
	<u>          </u>	<u>          </u>
<b>Amounts Recognized in Combined Balance Sheets</b>		
Accrued benefit cost	\$ (780)	\$ (835)
	<u>          </u>	<u>          </u>
<b>Actuarial Assumptions</b>		
Discount rate	6.50%	7.25%
Long-term rate of compensation increase	4.50%	5.50%

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The projected benefit obligation, accumulated benefit obligation and fair value of plan assets for pension plans with accumulated benefit obligations in excess of plan assets at February 28, 2003 and 2002, respectively, were:

	<u>2003</u>	<u>2002</u>
Projected benefit obligation	\$ 3,646	\$ 3,112
Accumulated benefit obligation	2,680	2,113
Fair value of plan assets	2,131	2,025

Plan assets are primarily invested in equity securities, corporate and government debt securities and common trust funds. Certain employees of the company are covered under defined contribution plans. The expense related to these plans was \$4.5 million, \$4.0 million and \$3.5 million in fiscal 2003, 2002 and 2001, respectively.

### 11. STOCK PLANS

Certain of the company's employees participate in ConAgra Foods' stock option plans. These stock option plans approved by the ConAgra Foods stockholders provide for granting of options to employees for

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purchase of common stock at prices equal to fair market value at the time of grant. Options become exercisable under various vesting schedules and generally expire ten years after the date of grant.

The changes in the outstanding stock options during the three years ended May 25, 2003, are summarized below:

	2003		2002		2001	
	Options	Price	Options	Price	Options	Price
Beginning of year	1,058.6	\$ 22.88	907.6	\$ 22.88	813.8	\$ 23.19
Granted	175.0	\$ 25.90	249.5	\$ 22.00	219.0	\$ 19.90
Exercised	(92.3)	\$ 16.65	(41.2)	\$ 15.42	(47.4)	\$ 13.68
Canceled	(75.1)	\$ 24.56	(57.3)	\$ 24.43	(77.8)	\$ 23.16
End of year	1,066.2	\$ 23.80	1,058.6	\$ 22.88	907.6	\$ 22.88
Exercisable at end of year	672.3	\$ 24.08	656.3	\$ 23.44	558.4	\$ 22.81

The following summarizes information about stock options outstanding as of May 25, 2003:

Range of Exercise Price	Options Outstanding			Options Exercisable	
	Options	Weighted Average Remaining	Weighted Average Exercise	Options	Weighted Average Exercise

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			<u>Life</u>		<u>Price</u>		<u>Price</u>
\$12.69	\$19.81	211.8	6.2	\$ 18.88	144.2	\$ 18.46	
\$19.82	\$22.00	290.9	7.1	\$ 21.54	155.3	\$ 21.18	
\$22.01	\$24.19	201.5	5.5	\$ 23.69	172.8	\$ 23.72	
\$24.20	\$28.31	271.5	7.7	\$ 26.87	109.5	\$ 28.31	
\$28.32	\$33.91	90.5	4.5	\$ 33.55	90.5	\$ 33.55	
\$12.69	\$33.91	1,066.2	6.6	\$ 23.80	672.3	\$ 24.08	

**12. SUBSEQUENT EVENT**

On June 9, 2003, ConAgra Foods announced an agreement to sell the company to Pilgrim's Pride Corporation. In connection with the expected sale, ConAgra Foods classified the company's long-lived assets as held for sale and recognized an impairment charge of \$69.4 million (net of an income tax benefit of \$42.6 million) in its financial statements to reduce the carrying amount of goodwill to zero and reflect a reduction in the carrying values of long-lived assets of the company to their fair market value, less cost to sell. The company has not recognized this impairment charge as the company considers its long-lived assets to be fully recoverable on a held for use basis.

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Annex A

[LETTERHEAD OF MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED]

August 20, 2003

Special Committee of the Board of Directors

Pilgrim's Pride Corporation

110 South Texas

Pittsburg, Texas 75686

Members of the Special Committee:

Pilgrim's Pride Corporation (the "Company") proposes to engage in a reclassification transaction (the "Reclassification") in which the Company would reclassify each outstanding share of Class A Common Stock, par value \$.01 per share (the "Class A Common Stock"), and each outstanding share of Class B Common Stock, par value \$.01 per share (the "Class B Common Stock"), into one share (the "Exchange Ratio") of a single class of common stock, par value \$.01, of the Company (the "New Common Stock").

You have asked us whether, in our opinion, the Exchange Ratio pursuant to the Reclassification is fair from a financial point of view to both the holders of the Class A Common Stock and the Class B Common Stock, in each case other than members of the Pilgrim family and their affiliated entities.

In arriving at the opinion set forth below, we have, among other things:

- (1) Reviewed the Company's certificate of incorporation as it relates to the rights and privileges of the Class A Common Stock and the Class B Common Stock, and held discussions with the Company's outside counsel regarding such rights and privileges;
- (2) Reviewed a draft of the form of proposed certificate of amendment of the certificate of incorporation of the Company providing for the Reclassification (the "Amendment");
- (3) Conducted discussions with members of senior management of the Company concerning the original creation of a dual class structure, the strategic and other reasons behind the decision of the Company to engage in the Reclassification, and certain other



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aspects of the Reclassification;

- (4) Reviewed the market prices, trading volumes and trading liquidity for the Class A Common Stock and the Class B Common Stock and compared them with the securities of certain publicly traded dual class companies that we deemed to be relevant;
- (5) Compared the proposed financial terms of the Reclassification and the Exchange Ratio with the financial terms of certain other reclassification transactions that we deemed to be relevant and the exchange ratios used in such transactions;
- (6) Reviewed a draft of the form of Voting Agreement (the "Voting Agreement") to be entered into by certain members of the Pilgrim family and their affiliated entities that provides, among other things, that the combined voting power of shares of New Common Stock that would be held by such holders immediately after the Reclassification will not exceed the total power held by such holders prior to the Reclassification;
- (7) Reviewed a draft of the preliminary proxy statement of the Company with respect to the Reclassification (the "Proxy Statement"); and
- (8) Reviewed such other financial studies and analyses and took into account such other matters as we deemed necessary, including our assessment of general economic, market and monetary conditions.

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In preparing our opinion, we have assumed and relied on the accuracy and completeness of all information supplied or otherwise made available to us, discussed with or reviewed by or for us, or publicly available, and we have not assumed any responsibility for independently verifying such information or undertaken an independent evaluation or appraisal of any of the assets or liabilities of the Company or been furnished with any such evaluation or appraisal, nor have we evaluated the solvency or fair value of the Company under any state or federal laws relating to bankruptcy, insolvency or similar matters. In addition, we have not assumed any obligation to conduct any physical inspection of the properties or facilities of the Company. We have further assumed that the Reclassification will qualify as a tax-free exchange and recapitalization for U.S. federal income tax purposes, and that the final forms of the Amendment and the Voting Agreement will be substantially similar to the last drafts reviewed by us. We have also assumed that the Reclassification will be consummated in accordance with the terms of the Amendment and as described in the Proxy Statement.

Our opinion is necessarily based upon market, economic and other conditions as they exist and can be evaluated on, and on the information made available to us as of, the date hereof.

We are acting as financial advisor to the Special Committee of the Board of Directors (the Special Committee ) in connection with the delivery of this opinion and will receive a fee from the Company for our services upon the delivery of this opinion. In addition, the Company has agreed to indemnify us for certain liabilities arising out of our engagement. As you are aware, we were not requested to and did not provide advice concerning the structure, the Exchange Ratio or any other aspects of the Reclassification. We have, in the past, provided financing services to the Company and may continue to do so and have received, and may receive, fees for the rendering of such services. In addition, in the ordinary course of our business, we may actively trade the Class A Common Stock and the Class B Common Stock and other securities of the Company for our own account and for the accounts of customers and, accordingly, may at any time hold a long or short position in such securities.

This opinion is for the use and benefit of the Special Committee and the Board of Directors of the Company. Our opinion does not address the merits of the underlying decision by the Company to engage in the Reclassification and does not constitute a recommendation to any shareholder of the Company as to how such shareholder should vote on the proposed Reclassification or any matter related thereto. In addition, you have not asked us to address, and this opinion does not address, the fairness to, or any other consideration of, the holders of any class of securities, creditors or other constituencies of the Company other than the holders of the Class A Common Stock and the Class B Common Stock (in each case other than members of the Pilgrim family and their affiliated entities). We are not expressing any opinion herein as to the prices at which the Class A Common Stock or the Class B Common Stock will trade following the announcement of the Reclassification or as to the prices at which the New Common Stock will trade following consummation of the Reclassification, and our opinion does not address the relative fairness of the Exchange Ratio to the holders of the Class A Common Stock and the Class B Common Stock.

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On the basis of and subject to the foregoing, we are of the opinion that, as of the date hereof, the Exchange Ratio pursuant to the Reclassification is fair from a financial point of view to both the holders of the Class A Common Stock and the Class B Common Stock, in each case other than members of the Pilgrim family and their affiliated entities.

Very truly yours,

MERRILL LYNCH, PIERCE, FENNER & SMITH

INCORPORATED

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Annex B

[LETTERHEAD OF CREDIT SUISSE FIRST BOSTON LLC]

June 7, 2003

Board of Directors

Pilgrim's Pride Corporation

110 South Texas

Pittsburg, Texas 75686

Members of the Board:

You have asked us to advise you with respect to the fairness, from a financial point of view, to Pilgrim's Pride Corporation ( Pilgrim's Pride ) of the Purchase Price (as defined below) to be paid by Pilgrim's Pride pursuant to the terms of the Stock Purchase Agreement, dated as of June 7, 2003 (the Agreement ), between ConAgra Foods, Inc. ( ConAgra ) and Pilgrim's Pride. The Agreement provides for, among other things, the purchase by Pilgrim's Pride (the Acquisition ) of all of the outstanding shares of the capital stock of ConAgra Poultry Company ( CPC ), To-Ricos, Inc., Lovette Company, Inc. and Hester Industries, Inc., each a wholly owned subsidiary of ConAgra (collectively, together with ConAgra Poultry Company of Kentucky, Inc., a wholly owned subsidiary of CPC, the Acquired Companies ), as a result of which Pilgrim's Pride will acquire ConAgra's chicken business (the Business ), for a total purchase price equal to the combined, consolidated stockholders' equity of the Acquired Companies as of the closing date of the Acquisition calculated in accordance with generally accepted accounting principles consistently applied and as adjusted pursuant to the Agreement (the Adjusted Net Book Value ), less a discount of \$100 million net of certain amounts set forth in the Agreement and subject to further adjustment based on impairment charges arising after April 20, 2003 as specified in the Agreement (the Purchase Price ). The Agreement provides that the Purchase Price will be payable in the form of \$100 million in cash, up to 39,400,000 shares of Class A common stock, par value \$0.01 per share, of Pilgrim's Pride ( Pilgrim's Pride Class A Common Stock ) and a subordinated promissory note of Pilgrim's Pride maturing on March 4, 2011 and bearing interest, payable semiannually, at a rate of 10.50% per annum (the Subordinated Promissory Note ).

In arriving at our opinion, we have reviewed the Agreement and certain related documents, and also have reviewed certain publicly available business and financial information relating to Pilgrim's Pride. We have reviewed certain other information relating to Pilgrim's Pride and certain business and financial information relating to the Business, including financial forecasts and other information and data for Pilgrim's Pride and the Business, provided to or discussed with us by the management of Pilgrim's Pride as well as certain other business and financial information relating to the Business, including estimates as to the Adjusted Net Book Value and other financial data, provided to or discussed with us by the managements of ConAgra and the Acquired Companies. We have met with the managements of Pilgrim's Pride, ConAgra and the Acquired Companies to discuss the business and prospects of Pilgrim's Pride and the Business. We have considered certain financial and stock market data of Pilgrim's Pride and certain financial data of the Business, and we have compared those data with similar data for publicly held companies in businesses similar to Pilgrim's Pride and the Business, and we have considered, to the extent publicly available, the financial terms of certain business combinations and other transactions which have been effected. We also considered such other information, financial studies, analyses and investigations and financial, economic and market criteria which we deemed relevant.

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In connection with our review, we have not assumed any responsibility for independent verification of any of the foregoing information and have relied on such information being complete and accurate in all material respects. With respect to the financial forecasts and other information and data for Pilgrim's Pride and the Business provided to or discussed with us by the management of Pilgrim's Pride, we have been advised, and have assumed, that such forecasts and other information and data (including the potential cost savings and other synergies anticipated by the

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Board of Directors

Pilgrim's Pride Corporate

June 7, 2003

management of Pilgrim's Pride to result from the Acquisition) have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of Pilgrim's Pride as to the future financial performance of Pilgrim's Pride and the Business and the other matters covered thereby, and further have assumed, with your consent, that the financial results reflected in such forecasts and other information and data will be realized in the amounts and at the times projected. With respect to the estimates as to the Adjusted Net Book Value and other financial data provided to or discussed with us by the managements of ConAgra and the Acquired Companies, we have been advised, and have assumed, that such estimates have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of ConAgra and the Acquired Companies and further have assumed, with your consent, that the actual Adjusted Net Book Value and other financial data will not vary from such estimates in any respect material to our analyses. We have assumed, with your consent, that in the course of obtaining the necessary regulatory and third party approvals and consents for the Acquisition, no modification, delay, limitation, restriction or condition will be imposed that will have an adverse effect on Pilgrim's Pride, the Business or the contemplated benefits to Pilgrim's Pride of the Acquisition and that the Acquisition will be consummated as described to us in accordance with the terms of the Agreement, without waiver, amendment or modification of any material term, condition or agreement. Representatives of Pilgrim's Pride have advised us, and we therefore have assumed, with your consent, that the Acquisition will be treated as an asset purchase for U.S. federal income tax purposes under Section 338(h)(10) of the Internal Revenue Code of 1986, as amended. We have not been requested to make, and have not made, an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of Pilgrim's Pride or the Business, nor have we been furnished with any such evaluations or appraisals. Our opinion is necessarily based upon information available to us, and financial, economic, market and other conditions as they exist and can be evaluated, on the date hereof. We are not expressing any opinion as to what the value of Pilgrim's Pride Class A Common Stock or the Subordinated Promissory Note actually will be when issued pursuant to the Acquisition or the prices or values at which Pilgrim's Pride Class A Common Stock or the Subordinated Promissory Note will trade or otherwise be transferable at any time. Our opinion does not address the relative merits of the Acquisition as compared to other business strategies that might be available to Pilgrim's Pride, nor does it address the underlying business decision of Pilgrim's Pride to proceed with the Acquisition.

We have acted as financial advisor to Pilgrim's Pride in connection with the Acquisition and will receive a fee for our services, a significant portion of which is contingent upon the consummation of the Acquisition. We also will receive a fee in connection with this opinion. We and our affiliates in the past have provided services to Pilgrim's Pride and ConAgra unrelated to the Acquisition, for which services we and our affiliates have received compensation. In the ordinary course of business, we and our affiliates may actively trade the securities of Pilgrim's Pride and ConAgra for our own and such affiliates' accounts and for the accounts of customers and, accordingly, may at any time hold long or short positions in such securities.

It is understood that this letter is for the information of the Board of Directors of Pilgrim's Pride in connection with its evaluation of the Acquisition and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act on any matters relating to the Acquisition.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the Purchase Price to be paid by Pilgrim's Pride in the Acquisition is fair, from a financial point of view, to Pilgrim's Pride.

Very truly yours,

CREDIT SUISSE FIRST BOSTON LLC

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Annex C

**CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION OF  
PILGRIM S PRIDE CORPORATION**

Pilgrim s Pride Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (the Corporation ), does hereby certify that:

1. The amendment to the Corporation s Certificate of Incorporation set forth below was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

2. Article Fourth of the Corporation s Certificate of Incorporation is amended to read in its entirety as follows:

FOURTH:

I. Authorized Shares

The total number of shares of stock which the Corporation shall have authority to issue is 165,000,000 shares, consisting of the following:

- (1) 160,000,000 shares of common stock, par value \$.01 per share (the Common Stock ); and
- (2) 5,000,000 shares of preferred stock, par value \$.01 per share (the Preferred Stock ).

II. Designations, Preferences, etc. of the Capital Stock

The designations, preferences, powers, qualifications, and special or relative rights or privileges of the capital stock of the Corporation shall be as set forth below.

A. Common Stock



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(1) Reclassification of Existing Class A and Class B Common Stock.

(a) Upon the filing of this Certificate of Amendment of Certificate of Incorporation, each share of Class A Common Stock, par value \$.01 per share, of the Corporation either issued and outstanding or held by the Corporation as treasury stock, shall be and is automatically reclassified and changed (without any further act) into one share of Common Stock (such reclassification being the Class A Reclassification ).

(b) Upon the filing of this Certificate of Amendment of Certificate of Incorporation, each share of Class B Common Stock, par value \$.01 per share, of the Corporation either issued and outstanding or held by the Corporation as treasury stock, shall be and is automatically reclassified and changed (without any further act) into one share of Common Stock (such reclassification being the Class B Reclassification ).

(2) Voting Rights of the Common Stock.

(a) The holders of record of Common Stock shall be entitled to one vote per share for all purposes, except that a holder of record of a share of Common Stock shall be entitled to twenty votes per share on each matter submitted to a vote by the stockholders at a meeting of stockholders for each such share held of record by such holder on the record date for such meeting if, with respect to such share:

(i) each and every beneficial owner of such share was the beneficial owner thereof at the effective time of the Class A Reclassification or the Class B Reclassification; and

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(ii) there has been no change in the beneficial ownership of the share at any time after the filing of this Certificate of Amendment of Certificate of Incorporation.

(b) A change in beneficial ownership of an outstanding share of Common Stock shall be deemed to have occurred whenever a change occurs in any person or group of persons who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (i) voting power, which includes the power to vote or to direct the voting of such share of Common Stock, (ii) investment power, which includes the power to direct the sale or other disposition of such share of Common Stock, (iii) the right to receive or retain the proceeds of any sale or other disposition of such share of Common Stock, or (iv) the right to receive any distributions, including cash dividends, in respect of such share of Common Stock.

(A) In the absence of proof to the contrary provided in accordance with the procedures referred to in subparagraph (d) of this paragraph (2), a change in the beneficial ownership shall be deemed to have occurred whenever a share of Common Stock is transferred of record into the name of any other person.

(B) The beneficial owner of an outstanding share of Common Stock held of record on a record date for determining the holders entitled to vote on any matter submitted to a vote by the shareholders (a Record Date ) in street or nominee name or by a broker, clearing agency, voting trustee, bank, trust company or other nominee (including any share so held on at the time of filing of this Certificate of Amendment of Certificate of Incorporation) shall be presumed to have acquired the beneficial ownership of such share subsequent to the filing of this Certificate of Amendment of Certificate of Incorporation. Such presumption shall be rebuttable by showing that beneficial ownership of such share with respect to each and every beneficial owner thereof complies with subparagraph (a) of this paragraph (2).

(C) In the case of a share of Common Stock held of record in the name of any person as a trustee, agent, guardian or custodian under the Uniform Transfers to Minors Act in effect in any state, a change in the beneficial ownership shall be deemed to have occurred whenever there is a change in the beneficiary of such trust, the principal of such agent, the ward of such guardian or the minor for whom such custodian is acting or in such trustee, agent, guardian or custodian.

(c) Notwithstanding anything in this paragraph (2) to the contrary, no change in beneficial ownership shall be deemed to have occurred solely as a result of:

(i) any event that occurred prior to the filing of this Certificate of Amendment of Certificate of Incorporation pursuant to the terms of any contract (other than a contract for the purchase and sale of shares of Common Stock contemplating prompt settlement), including contracts providing for options, rights of first refusal and similar arrangements in existence at the time of such filing to which any holder of shares of Common Stock is a party;

(ii) any transfer of any interest in a share of common stock pursuant to a bequest or inheritance by operation of law upon the death of any individual, or by any other transfer to or primarily for the benefit of family member(s) of the transferor or any trust, partnership or other entity primarily for the benefit of one or more of such family

member(s), or pursuant to an appointment of a successor trustee, general partner or similar fiduciary or the grant of a proxy or other voting rights to one or more individuals with respect to any such trust, partnership or other entity, including a gift;

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(iii) any change in the beneficiary of any trust or any distribution of a share of Common Stock from trust, by reason of the birth, death, marriage or divorce of any natural person, the adoption of any natural person prior to age 18 or the passage of a given period of time or the attainment by any natural person of a specific age, or the creation or termination of any guardianship or custodial arrangement;

(iv) any transfer of any interest in a share of Common Stock from one spouse to another by reason of separation or divorce or under or pursuant to community property laws or other similar laws of any jurisdiction;

(v) any appointment of a successor trustee, agent, guardian, custodian or similar fiduciary with respect to a share of Common Stock if neither such successor has nor its predecessor had the power to vote or to dispose of such share of Common Stock without further instructions from others;

(vi) any change in the person to whom dividends or other distributions in respect of a share of Common Stock are to be paid pursuant to the issuance or modification of a revocable dividend payment order;

(vii) any transfer of the beneficial ownership of a share of Common Stock from one employee benefit plan of the Corporation to another employee benefit plan of the Corporation;

(viii) the grant by any person of the right to vote any shares of which such person is the beneficial owner, provided the agreement, arrangement or understanding to vote such shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(ix) any event occurring under the Share Voting Agreement, dated as of June 7, 2003, among Lonnie Bo Pilgrim, Lonnie Ken Pilgrim and certain affiliated entities and ConAgra Foods, Inc. or any voting agreement to which any such persons or entities are parties entered into in connection with the New York Stock Exchange's consent to the Class A Reclassification and Class B Reclassification.

As used in paragraph 2(c)(ii) above, family member of a transferor means the transferor's spouse, ancestors, lineal descendants, siblings and their descendants, aunts and uncles, mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law and first cousins; and a legally adopted child of an individual shall be treated as a child of such individual by blood.

(d) For purposes of this paragraph (2), all determinations concerning changes in beneficial ownership, or the absence of any such change, shall be made by the Corporation or, at any time when a transfer agent is acting with respect to the share of Common Stock, by such transfer agent on the Corporation's behalf. Written procedures designed to facilitate such determinations shall be established by the Corporation and refined from time to time. Such procedures shall provide, among other things, the manner of proof of facts that will be accepted and the frequency with which such proof may be required to be renewed. The Corporation and any transfer agent shall be entitled to rely on all information concerning beneficial ownership of the shares of Common Stock coming to their attention from any source and in any manner reasonably deemed by them to be reliable, but neither the Corporation nor any transfer agent shall be charged with any other knowledge concerning the beneficial ownership of the shares of Common Stock.

(e) A beneficial owner of any share of Common Stock acquired as a direct result of a stock split, stock dividend, reclassification, rights offering or other distribution of shares or rights by the Corporation with respect to existing shares ( dividend shares ) will be deemed to have been the continuous beneficial owner of such share from the date on which the original shares, with respect to which the dividend shares were issued, were acquired.

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(f) The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the Common Stock.

(g) No holder of Common Stock shall be entitled to preemptive or subscription rights.

(3) Identical Rights. Each share of Common Stock, whether at any particular time the holder thereof is entitled to exercise twenty votes or one, shall be identical to all other shares of Common Stock in all respects, and together the shares of Common Stock shall constitute a single class of shares of the Corporation.

(4) Dividends on the Common Stock.

(a) Subject to the prior rights and preferences, if any, applicable to shares of the Preferred Stock or any series thereof, the holders of shares of Common Stock shall be entitled to receive such dividends (payable in cash, stock, or otherwise) as may be declared thereon by the Corporation's board of directors (the Board of Directors) at any time and from time to time out of any funds of the Corporation legally available therefor.

(b) Dividends payable under this paragraph (4) shall be paid to the holders of record of the outstanding shares of Common Stock as their names shall appear on the stock register of the Corporation on the record date fixed by the Board of Directors in advance of declaration and payment of each dividend. Any shares of Common Stock issued as a dividend pursuant to this paragraph (4) shall, when so issued, be duly authorized, validly issued, fully paid and non-assessable, and free of all liens and charges.

(c) Notwithstanding anything contained herein to the contrary, no dividends on shares of Common Stock shall be declared by the Board of Directors or paid or set apart for payment by the Corporation at any time that such declaration, payment or setting apart is prohibited by applicable law.

(5) Liquidation Rights of the Common Stock. In the event of any voluntary or involuntary liquidation, dissolution, or winding-up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock or any series thereof, the holders of shares of Common Stock shall be entitled to receive all of the remaining assets of the Corporation available for distribution to its stockholders, ratably in proportion to the number of shares of Common Stock held by them. A liquidation, dissolution, or winding-up of the Corporation, as such terms are used in this paragraph (5), shall not be deemed to be occasioned by or to include any consolidation or merger of the Corporation with or into any other corporation or corporations or other entity or a sale, lease, exchange, or conveyance of all or a part of the assets of the Corporation.

B. Preferred Stock

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Shares of the Preferred Stock may be issued from time to time in one or more series, the shares of each series to have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in a resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation. The Board of Directors of the Corporation is hereby expressly authorized, subject to the limitations provided by law, to establish and designate series of the Preferred Stock, to fix the number of shares constituting each series, and to fix the designations and the relative powers, rights, preferences and limitations of the shares of each series and the variations in the relative powers, rights, preferences and limitations as between series, and to increase and to decrease the number of shares constituting each series.

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IN WITNESS WHEREOF, Pilgrim s Pride Corporation has caused this Certificate to be executed by \_\_\_\_\_, its authorized officer, on this \_\_\_\_ day of \_\_\_\_\_, 2003.

PILGRIM S PRIDE CORPORATION

By: \_\_\_\_\_

Name:

Title:

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**Annex D**

**STOCK PURCHASE AGREEMENT**

AGREEMENT, dated as of June 7, 2003, by and between Pilgrim's Pride Corporation, a Delaware corporation (Buyer), and ConAgra Foods, Inc., a Delaware corporation (Seller).

**RECITALS:**

- (a) Seller is the owner of all of the issued and outstanding capital stock of ConAgra Poultry Company (CPC), To-Ricos, Inc. (To-Ricos), Lovette Company, Inc. (Lovette) and Hester Industries, Inc. (Hester).
- (b) Seller desires to sell all of the issued and outstanding shares of capital stock of CPC (the CPC Stock), To-Ricos (the To-Ricos Stock), Lovette (the Lovette Stock) and Hester (the Hester Stock) and, together with the CPC Stock, To-Ricos Stock and Lovette Stock, the Stock) to Buyer, and Buyer desires to purchase the Stock from Seller, for the consideration and upon the terms and conditions contained in this Agreement.

**AGREEMENT:**

In consideration of the foregoing recitals and in further consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree, subject to the terms and conditions hereinafter set forth, as follows:

1. **Definitions.**

- 1.1 **Certain Defined Terms.** As used in this Agreement, the following terms shall have the following respective meanings:

Acquired Companies means CPC, To-Ricos, Lovette, Hester and the Company Subsidiary, and Acquired Company means any of them.

Action shall mean any claim, action, litigation, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

Affiliate shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such specified Person.

Agreement shall mean this Agreement.

Ancillary Agreements shall mean, collectively, the Registration Rights Agreements, the Transition Services Agreement, the Transition Trademark License Agreement, the ConAgra Supply Agreement, the Molinos Supply Agreement, the Montgomery Supply Agreement, the Environmental License Agreement, the Buyer Release, the Seller Release and any other agreement, certificate or instrument executed and delivered at Closing pursuant to this Agreement.

Applicable Accounting Principles shall mean GAAP, consistently applied, in effect on the date hereof, subject, however, to the principles and procedures set forth on Exhibit 1.1(a).

Business shall mean all of the chicken business (including grow-out, slaughter, processing, further processing, rendering, sales and distribution, both at retail and foodservice, and related assets and employees), including the Pierce and PFS businesses, conducted by the Acquired Companies as of the date hereof at and from the facilities described on Exhibit 1.1(b), excluding, however, the Retained Businesses. Without limitation, Business shall include the businesses and operations managed by Seller's management team based out of Duluth, Georgia, including the Pierce and PFS businesses.

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Buyer Closing Material Adverse Effect shall mean any result, occurrence, fact, change or event arising between March 29, 2003 and the Closing Date (whether or not such result, occurrence, fact, change or event has manifested itself in the historical financial statements of Buyer, and whether known or unknown as of the date of this Agreement), that has had, or can reasonably be expected to have, a material adverse impact on the business, operations, financial condition, results of operations or capitalization, in each case, of Buyer, taken as a whole, provided that any such result, occurrence, fact, change or event has had, or can reasonably be expected to have, individually or in the aggregate, a negative impact on Buyer in excess of \$25,000,000, net of any tax benefits, recoveries and/or receivables relating thereto; provided, however, that the following shall not be taken into account in determining whether there has been a Buyer Closing Material Adverse Effect :

- (1) any such effects attributable to general conditions affecting the Mexican economy or the United States economy nationally or regionally (including, without limitation, prevailing interest rate and securities market levels);
- (2) any such effects attributable to conditions (whether economic, legal, regulatory, financial, political or otherwise) affecting the poultry industry generally which do not effect Buyer materially disproportionately relative to other similarly situated participants in the poultry industry;
- (3) any such effects relating to or resulting from, directly or indirectly, the transactions contemplated by this Agreement or the announcement or pendency thereof;
- (4) fees and expenses, severance and other benefit or compensation costs paid or to be paid by Buyer or Seller pursuant to this Agreement in connection with the transactions contemplated in this Agreement;
- (5) any action taken by, or any action of, Buyer with the prior written consent of Seller; and
- (6) any failure by Buyer to meet any internal projections, expectations or forecasts or published revenue or earnings predictions for any period ending on or after the date of this Agreement as a result of any one or more of the events described in items (1)-(5) above.

Buyer Material Adverse Effect shall mean any result, occurrence, fact, change or event (whether or not such result, occurrence, fact, change or event has manifested itself in the historical financial statements of Buyer, and whether known or unknown as of the date of this Agreement or the Closing Date), that has had, or can reasonably be expected to have, a material adverse impact on (a) the business, operations, financial condition, results of operations or capitalization, in each case, of Buyer, taken as a whole, or (b) the ability of Seller or Buyer to consummate the transactions contemplated by this Agreement; provided, however, that the following shall not be taken into account in determining whether there has been a Buyer Material Adverse Effect :

- (1) any such effects attributable to general conditions affecting the Mexican economy or the United States economy nationally or regionally (including, without limitation, prevailing interest rate and securities market levels);

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(2) any such effects attributable to conditions (whether economic, legal, regulatory, financial, political or otherwise) affecting the poultry industry generally which do not effect Buyer materially disproportionately relative to other similarly situated participants in the poultry industry;

(3) any such effects relating to or resulting from, directly or indirectly, the transactions contemplated by this Agreement or the announcement or pendency thereof;

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(4) fees and expenses, severance and other benefit or compensation costs paid or to be paid by Buyer or Seller pursuant to this Agreement in connection with the transactions contemplated in this Agreement;

(5) any action taken by, or any action of, Buyer with the prior written consent of Seller; and

(6) any failure by Buyer to meet any internal projections, expectations or forecasts or published revenue or earnings predictions for any period ending on or after the date of this Agreement as a result of any one or more of the events described in items (1)-(5) above.

Buyer Retention Obligations shall mean the obligations to pay (or reimburse Seller for Seller's payment of) the restricted stock benefits, stock option (\$24) benefits and 24 month severance benefits payable pursuant to the Retention Agreements listed in Exhibit 1.1(j)(v), or any substitute or replacement agreements agreed to by Buyer and Seller, plus payroll taxes with respect to the payment of such amounts. Such amounts are summarized in Exhibit 1.1(i)(x) and total \$722,400, \$1,079,153, and \$4,491,738, respectively.

Code shall mean the Internal Revenue Code of 1986, as amended.

Company Closing Material Adverse Effect shall mean any result, occurrence, fact, change or event arising between April 20, 2003 and the Closing Date (whether or not such result, occurrence, fact, change or event has manifested itself in the historical financial statements of the Business, and whether known or unknown as of the date of this Agreement), that has had, or can reasonably be expected to have, a material adverse impact on the business, operations, financial condition, results of operations or capitalization, in each case, of the Business, taken as a whole, provided that any such result, occurrence, fact, change or event has had, or can reasonably be expected to have, individually or in the aggregate, a negative impact on the Business in excess of \$25,000,000, net of any tax benefits, recoveries and/or receivables relating thereto; provided, however, that the following shall not be taken into account in determining whether there has been a Company Closing Material Adverse Effect :

(1) any such effects attributable to general conditions affecting the Puerto Rican economy or the United States economy nationally or regionally (including, without limitation, prevailing interest rate and securities market levels);

(2) any such effects attributable to conditions (whether economic, legal, regulatory, financial, political or otherwise) affecting the poultry industry generally which do not effect the Business materially disproportionately relative to other similarly situated participants in the poultry industry;

(3) any such effects relating to or resulting from, directly or indirectly, the transactions contemplated by this Agreement or the announcement or pendency thereof;

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(4) fees and expenses, severance and other benefit or compensation costs paid or to be paid by Buyer or Seller pursuant to this Agreement in connection with the transactions contemplated in this Agreement;

(5) any action taken by, or any action of, Seller with the prior written consent of Buyer; and

(6) any failure by the Business to meet any internal projections, expectations or forecasts or published revenue or earnings predictions for any period ending on or after the date of this Agreement as a result of any one or more of the events described in items (1)-(5) above.

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Company Material Adverse Effect shall mean any result, occurrence, fact, change or event (whether or not such result, occurrence, fact, change or event has manifested itself in the historical financial statements of the Business, and whether known or unknown as of the date of this Agreement or the Closing Date), that has had, or can reasonably be expected to have, a material adverse impact on (a) the business, operations, financial condition, results of operations or capitalization, in each case, of the Business, taken as a whole, or (b) the ability of Seller or Buyer to consummate the transactions contemplated by this Agreement; provided, however, that the following shall not be taken into account in determining whether there has been a Company Material Adverse Effect :

(1) any such effects attributable to general conditions affecting the Puerto Rican economy or the United States economy nationally or regionally (including, without limitation, prevailing interest rate and securities market levels);

(2) any such effects attributable to conditions (whether economic, legal, regulatory, financial, political or otherwise) affecting the poultry industry generally which do not effect the Business materially disproportionately relative to other similarly situated participants in the poultry industry;

(3) any such effects relating to or resulting from, directly or indirectly, the transactions contemplated by this Agreement or the announcement or pendency thereof;

(4) fees and expenses, severance and other benefit or compensation costs paid or to be paid by Buyer or Seller pursuant to this Agreement in connection with the transactions contemplated in this Agreement;

(5) any action taken by, or any action of, Seller with the prior written consent of Buyer; and

(6) any failure by the Business to meet any internal projections, expectations or forecasts or published revenue or earnings predictions for any period ending on or after the date of this Agreement as a result of any one or more of the events described in items (1)-(5) above.

Company Subsidiary shall mean ConAgra Poultry Company of Kentucky, Inc., a Kentucky corporation.

ConAgra Supply Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(c).

Confidentiality Agreement shall mean the Confidentiality Agreements between Buyer and Seller, each dated March 7, 2003.

Control (including the terms Controlled by and under common Control with ), with respect to the relationship between or among two or more Persons, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the affairs or management of a Person,

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whether through the ownership of voting securities, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

Deloitte shall mean Deloitte & Touche LLP.

Discount Amount shall mean \$100,000,000 less the sum of (i) the Seller Retention Obligations, (ii) the lesser of the cost of the audit referred to in Section 9.15 and \$600,000 and (iii) any out-of-pocket costs and expenses incurred by Seller in providing environmental reports, title searches, insurance (or commitments therefor) or real estate surveys requested by Buyer in a writing confirming that any such costs and expenses will reduce the Discount Amount.

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DOJ shall mean the United States Department of Justice.

DOL shall mean the United States Department of Labor.

Encumbrances shall mean any mortgage, lien, pledge, hypothecation, security interest, encumbrance, covenant, title defect, easement, title retention agreement, voting trust agreement or right-of-first refusal.

Environmental License Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(d).

Environmental Site Assessments shall mean the reports, surveys and site assessments listed on Exhibit 1.1(e) attached hereto.

Estimated Purchase Price shall mean estimated Adjusted Net Book Value, as derived from the Estimated Closing Balance Sheet.

Equity Securities shall mean any capital stock or other equity interest or any securities convertible into or exchangeable for capital stock or other equity interest or any other rights, warrants or options to acquire any of the foregoing securities.

ERISA shall mean the Employee Retirement Income Security Act of 1974, as amended.

FTC shall mean the United States Federal Trade Commission.

GAAP shall mean United States generally accepted accounting principles.

Governmental Authority shall mean any federal, state, local or foreign government, any governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

HSR Act shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

Indemnified Party shall mean a party entitled to indemnification hereunder.

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Indemnifying Party shall mean a party obligated to provide indemnification hereunder.

IRS shall mean the United States Internal Revenue Service.

Law shall mean any currently existing federal, state, local or foreign statute, law, ordinance, regulation, rule, executive order, code, governmental restriction or other requirement of law or any judicial or administrative interpretation thereof.

Liabilities shall mean any and all debts, liabilities and obligations, whether known or unknown or contingent or liquidated.

Molinos Supply Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(f).

Montgomery Supply Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(g).

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Net Book Value shall mean the combined, consolidated stockholders' equity of the Acquired Companies as of the Effective Time and calculated in accordance with Applicable Accounting Principles.

Permitted Encumbrances shall mean the Encumbrances listed on Exhibit 1.1(h) hereto.

Person shall mean any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization, other entity or Governmental Authority.

Pre-Closing Period means all taxable periods ending on or before the Closing Date, including that portion of any Straddle Period ending on the Closing Date.

Registration Rights Agreements shall mean the Registration Rights and Transfer Restriction Agreement and the 10.50% Subordinated Notes due March 4, 2011 Registration Rights Agreement, both as attached hereto as Exhibit 1.1(i).

Retained Assets shall mean the assets of Seller, CPC or their Affiliates listed on Exhibit 9.4.3.

Retained Businesses shall mean all businesses and operations of Seller and its Affiliates other than those relating to the Business, including, without limitation, business and operations relating to the Butterball, Banquet and Country Skillet businesses and operations and the Retained Assets.

SEC shall mean the United States Securities and Exchange Commission.

Seller Retention Obligations shall mean (i) \$7,074,202, comprised of (x) the Transaction Bonuses, and (y) the \$2,500,000 payment pursuant to the agreement attached as Exhibit 1.1(j)(z), plus (ii) the amount of payroll taxes payable by Seller with respect to the payment of such amounts.

Straddle Period means any taxable year or period beginning on or before the Closing Date and ending after the Closing Date.

Subordinated Promissory Note shall mean a Subordinated Promissory Note to be delivered by Buyer to Seller pursuant to a customary indenture having covenants substantially as described on Exhibit 1.1(k).

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Subsidiary shall mean, with respect to any Person, another Person owned directly or indirectly by such Person by reason of such Person owning or controlling an amount of the voting securities, other voting ownership or voting partnership interests of another Person which is sufficient to elect at least a majority of its Board of Directors or other governing body of another Person or, if there are no such voting interests, at least a majority of the equity interests of another Person.

Tax or Taxes means all federal, state, local, foreign and other taxes, charges, fees, duties (including customs duties), levies or assessments, including income, gross receipts, net proceeds, alternative or add-on minimum, ad valorem, turnover, real and personal property (tangible and intangible), gains, sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, occupational, windfall profits, severance, license, payroll, environmental, capital stock, employee's income withholding, other withholding, unemployment and social security taxes, that are imposed by any Governmental Authority, and including any interest, penalties or additions to tax attributable thereto.

Tax Return means any report, return or other information required to be supplied to a Governmental Authority in connection with any Taxes and all claims for refunds of Taxes.

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Transaction Bonuses shall mean the transaction bonuses identified on Exhibit 1.1(j)(x), which total \$4,574,202 in the aggregate, and are paid pursuant to the Retention Agreements listed in Exhibit 1.1(j)(y), or any substitute or replacement agreements agreed to by Seller and Buyer.

Transfer Taxes means any Taxes (other than Taxes imposed on net income or gains) imposed on the sale of the Stock or as a result of the joint election under Section 338(h)(10) for the Acquired Companies pursuant to or in connection with the transactions contemplated in this Agreement.

Transition Services Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(l); provided that at any time prior to the 30<sup>th</sup> day prior to Closing, Buyer may specify that it does not want some of the transition services to be provided to it under such agreement and Seller may specify that it does not want some of the transition services to be provided to it under such agreement, in which case appropriate adjustments shall be made to such agreement to remove from the agreement the provision of the specified transition services and the cost identified therewith.

Transition Trademark License Agreement shall mean that certain agreement between Buyer and Seller in the form attached hereto as Exhibit 1.1(m).

United States shall mean the United States of America.

Voting Agreement shall mean that certain agreement between Seller and certain stockholders of Buyer in the form attached hereto as Exhibit 1.1(n) hereto.

1.2 **Other Defined Terms.** The following terms shall have the meanings given to such terms in the Sections indicated below.

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Report	5.1(b)
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2. **Purchase and Sale of Stock.** Subject to the terms and conditions set forth in this Agreement, at Closing, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, accept and acquire from Seller, all of the outstanding shares of the Stock.

3. **Consideration.**

- 3.1 **Purchase Price.** The purchase price payable by Buyer for the Stock (the Purchase Price ) shall be an amount equal to Final Adjusted Net Book Value, as set forth in the Final Adjusted Net Book Value Calculation.
- 3.2 **Estimated Closing Balance Sheet.** On the fourth (4<sup>th</sup>) business day prior to the Closing Date, Seller shall prepare and deliver an estimated combined consolidated balance sheet for the Business (the Estimated Closing Balance Sheet ), along with an estimate of the calculation of Adjusted Net Book Value, which shall be prepared pursuant to the provisions of Section 5.1(a) using the amounts reflected on the Estimated Closing Balance Sheet, both of which shall be estimated as of the Closing Date. Seller shall prepare the Estimated Closing Balance Sheet in good faith and in accordance with Applicable Accounting



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Principles. Buyer and its representatives shall have the right to consult with Seller in connection with the preparation of the Estimated Closing Balance Sheet but shall not have the right to approve the Estimated Closing Balance Sheet.

3.3 **Payment of the Purchase Price.** The Purchase Price shall be paid as follows:

3.3.1 **Cash Payment.** \$100,000,000 shall be paid by Buyer to Seller in cash at Closing (the Cash Payment ).

3.3.2 **Buyer's Shares.** A portion of the Purchase Price (the Share Amount ) shall be paid by Buyer issuing and delivering to Seller at Closing shares of Buyer's Class A common stock (the Shares ). The number of Shares to be issued to Seller at Closing shall be equal to the lesser of 39,400,000 or the number of Shares determined by dividing (i) forty-five percent (45%) of the Estimated Purchase Price by (ii) the greater of (1) the volume weighted average trading price of Buyer's Class A common stock on the New York Stock Exchange, as reported by Bloomberg, L.P., during the period from the first trading day following the date the parties publicly announce their signing of this Agreement through the date that is five (5) trading days prior to the Closing Date (the Average Price ) and (2) \$5.35. The value of such Shares for purposes of determining the amount of the Subordinated Promissory Note shall be equal to such number of Shares multiplied by the greater of the Average Price and \$5.35.

3.3.3 **Subordinated Promissory Note.** The balance of the Purchase Price shall be paid by Buyer executing and delivering to Seller the Subordinated Promissory Note in the principal amount of such balance. The principal balance of the Subordinated Promissory Note delivered at Closing shall be based upon the Estimated Purchase Price, and shall subsequently be adjusted to reflect the final Purchase Price in accordance with Section 5.2.

3.3.4 **Share Price Adjustment.** Notwithstanding anything to the contrary in this Agreement, in the event the Average Price is less than \$5.35, then, at Buyer's option, by written notice to Seller delivered not more than three (3) business days prior to the Closing Date specifying which option Buyer elects, one of the following shall apply: (i) Buyer shall issue to Seller that number of additional Shares equal to (x) the amount by which \$5.35 exceeds the Average Price, multiplied by the number of Shares determined in accordance with Section 3.3.2 (the Share Price Adjustment ) divided by (y) the Average Price; (ii) Buyer shall issue to Seller additional subordinated debt on the same terms as the Subordinated Promissory Note, the principal amount of which shall equal the Share Price Adjustment; (iii) Buyer shall deliver to Seller an additional amount in cash equal to the Share Price Adjustment; (iv) Buyer shall deliver to Seller a combination of the forms of additional consideration referred to in clauses (i), (ii) and (iii) above having an aggregate value equal to the Share Price Adjustment, such aggregate value determined by adding (a) the amount of cash, if any, (b) the principal amount of additional subordinated debt, if any, and (c) the number of additional shares, if any, multiplied by the Average Price; (v) Buyer and Seller shall mutually agree that Buyer shall deliver to Seller some other consideration having a value equal to the Share Price Adjustment; or (vi) Buyer may terminate this Agreement in accordance with Section 11.1(g) hereof, unless Seller agrees in writing, within 48 hours after receipt of written notice from Buyer of its intent to terminate this Agreement pursuant to Section 11.1(g), that the Purchase Price shall be reduced by an amount equal to the Share Price Adjustment, in which case Seller will not be entitled to the Share Price Adjustment and this Agreement will not be terminated pursuant to Section 11.1(g).

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3.3.5 **Asset Retention.** Notwithstanding anything to the contrary in this Agreement, in the event the Estimated Purchase Price exceeds \$600,000,000, then, at Seller's option, by written notice to Buyer delivered concurrently with the Estimated Closing Date Balance Sheet specifying which option Seller elects, one of the following shall apply: (i) Seller may agree that the Purchase Price shall be adjusted to an amount equal to \$600,000,000 in the event that, and notwithstanding that, the Purchase Price as determined pursuant to the terms and conditions of this Agreement (but for the application of this Section 3.3.5) would exceed \$600,000,000, in which event, for all purposes of this Agreement, the Estimated Purchase Price shall equal \$600,000,000 and the Purchase Price shall equal the lesser of (x) \$600,000,000 and (y) the Purchase Price as determined pursuant to the terms and conditions of this Agreement but for the application of this Section 3.3.5, (ii) the Moorefield, West Virginia facility, and all assets located thereat and rights relating thereto, shall be retained by Seller, excluded from the term "Business", and included within the term "Retained Assets", for all purposes of this Agreement and the Estimated Purchase Price shall be recalculated on the basis that such facility, assets and rights are excluded from the Business and retained by Seller, or (iii) Seller may terminate this Agreement in accordance with Section 11.1(j) hereof, unless in the case of clause (ii) or (iii) immediately above, Buyer agrees in writing, within 48 hours after receipt of written notice from Seller of its intent to exclude such assets or terminate this Agreement in accordance with either clause (ii) or (iii) immediately above, that Buyer will pay the Purchase Price in full, as determined in accordance with the terms and conditions of this Agreement, notwithstanding that the Purchase Price exceeds \$600,000,000, in which case such assets will not be excluded and this Agreement will not be terminated pursuant to Section 11.1(j). Seller represents that, if Seller elects to exclude the assets and rights referred to in clause (ii) immediately above, the Purchase Price will be no greater than \$600,000,000.

3.3.6 **Form of Payment.** All cash payments required to be made pursuant to this Agreement shall be made by wire transfer of immediately available funds to the account designated by the receiving party.

4. **Closing.** Subject to the terms and conditions contained in this Agreement, the closing of the transactions contemplated hereby (the "Closing") will occur at the offices of McGrath North Mullin & Kratz, PC LLO, First National Tower, 1601 Dodge Street, Suite 3700, Omaha, Nebraska 68102 (Seller's Counsel), on the fifth business day after the conditions set forth in Section 10 (other than those to be fulfilled at Closing) have been satisfied, or at such other place or on such other date as the parties hereto may mutually agree (the "Closing Date"). Closing shall be effective as of 11:59 p.m. central time on the Closing Date (the "Effective Time").

4.1 **Buyer's Obligations at Closing.** At the Closing, Buyer shall:

4.1.1 **Consideration.** Deliver or cause to be delivered to Seller the Cash Payment in accordance with Section 3 hereof.

4.1.2 **Shares.** Deliver to Seller stock certificates representing the Shares to be delivered in accordance with the provisions of Section 3.3.2 above.

4.1.3 **Subordinated Promissory Note.** Execute and deliver to Seller the Subordinated Promissory Note.

4.1.4 **Certificates.** Deliver to Seller the certificates contemplated in Section 10.3.

4.1.5 **ConAgra Supply Agreement.** Execute and deliver to Seller the ConAgra Supply Agreement.

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- 4.1.6 **Transition Services Agreement.** Execute and deliver to Seller the Transition Services Agreement.
- 4.1.7 **Release.** Cause each of the Acquired Companies to execute and deliver, to Seller a release in the form attached hereto as Exhibit 4.1.7 (the Buyer Release ), pursuant to which each such entity shall irrevocably discharge and forever release Seller and its Affiliates and their respective stockholders, directors, officers and employees (in their capacities as stockholders, directors, officers and employees of each of Seller, its Affiliates or the Acquired Companies) from any and all Liabilities, Actions, causes of action or other matters, whether known or unknown, arising or accruing on or prior to the Closing Date, other than those claims arising from this Agreement or the Ancillary Agreements or otherwise described therein.
- 4.1.8 **Registration Rights Agreements.** Execute and deliver to Seller the Registration Rights Agreements.
- 4.1.9 **Transition Trademark License Agreement.** Execute and deliver to Seller the Transition Trademark License Agreement.
- 4.1.10 **Environmental License Agreement.** Execute and deliver to Seller the Environmental License Agreement.
- 4.1.11 **Legal Opinion.** Deliver to Seller the executed legal opinion of Baker & McKenzie, Buyer's counsel, in the form attached hereto as Exhibit 4.1.11.
- 4.1.12 **Share Price Adjustment.** If applicable and at Buyer's election, deliver to Seller the additional Shares, subordinated debt, cash and/or other consideration in accordance with the provisions of Section 3.3.4 hereof.
- 4.1.13 **Molinos Supply Agreement.** Execute and deliver to Seller the Molinos Supply Agreement.
- 4.1.14 **Montgomery Supply Agreement.** Execute and deliver to Seller the Montgomery Supply Agreement.

4.2 **Seller's Obligations at Closing.** At the Closing, Seller shall:

- 4.2.1 **Stock Certificates.** Deliver or cause to be delivered to Buyer stock certificates representing all of the Stock, duly endorsed in blank or accompanied by stock powers duly endorsed in blank.
- 4.2.2 **Certificates.** Deliver to Buyer the certificates contemplated in Section 10.2.
- 4.2.3 **Resignations.** Deliver to Buyer, to the extent requested by Buyer, written resignations of the officers and directors of the Acquired Companies, pursuant to which such individuals will relinquish their titles. Such resignations will not affect ongoing employment with the Acquired Companies.
- 4.2.4 **Transition Services Agreement.** Execute and deliver to Buyer the Transition Services Agreement.
- 4.2.5

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**Release.** Execute and deliver, and cause its Subsidiaries that have had any business dealings with the Acquired Companies whatsoever to execute and deliver, to Buyer a release in the form attached hereto as Exhibit 4.2.5 (the Seller Release ), pursuant to which Seller and such Subsidiaries shall irrevocably discharge and forever release the Acquired Companies and the Company Employees (in their capacities as Company Employees) from any and all Liabilities, Actions, causes of action or other matters, whether known or unknown, arising or accruing on or prior to the Closing Date, other than those claims arising from this Agreement or the Ancillary Agreements or otherwise described therein.

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- 4.2.6 **Registration Rights Agreements.** Execute and deliver to Buyer the Registration Rights Agreements.
- 4.2.7 **Transition Trademark License Agreement.** Execute and deliver to Buyer the Transition Trademark License Agreement.
- 4.2.8 **Environmental License Agreement.** Execute and deliver to Buyer the Environmental License Agreement.
- 4.2.9 **Legal Opinion.** Deliver to Buyer the executed legal opinion of McGrath North Mullin & Kratz, PC LLO, Seller's counsel, in the form attached hereto as Exhibit 4.2.9.
- 4.2.10 **Certificate of Non-Foreign Status.** Deliver to Buyer a certificate in the form required by Treas. Reg. §1.1445-2(b)(3)(iii)(B) executed by Seller.
- 4.2.11 **Representation Letter.** Execute and deliver to Buyer a representation letter in the form attached as Exhibit 4.2.11.
- 4.2.12 **ConAgra Supply Agreement.** Execute and deliver to Buyer the ConAgra Supply Agreement.
- 4.2.13 **Molinos Supply Agreement.** Execute and deliver to Buyer the Molinos Supply Agreement.
- 4.2.14 **Montgomery Supply Agreement.** Execute and deliver to Buyer the Montgomery Supply Agreement.

## **5. Post-Closing Settlement.**

### **5.1 Closing Balance Sheet.**

- (a) As soon as reasonably practicable following the Closing Date, but in no event more than sixty (60) days after Closing, Buyer shall prepare a combined, consolidated balance sheet of the Acquired Companies as of the Effective Time in accordance with the Applicable Accounting Principles (the Preliminary Closing Balance Sheet ) and within such sixty (60) day period Buyer shall submit the Preliminary Closing Balance Sheet to Seller, together with a preliminary calculation of Adjusted Net Book Value. For purposes of this Agreement, Adjusted Net Book Value shall mean Net Book Value as reflected on the Estimated Closing Balance Sheet, Preliminary Closing Balance Sheet, Preliminary Audited Closing Balance Sheet and Final Closing Balance Sheet, as applicable, as adjusted as necessary to: (i) provide that any charge or credit as a result of FAS 133 which would otherwise result in an increase or decrease in stockholder's equity shall be an asset or liability, as the case may be, (ii) eliminate from Net Book Value the effect of recorded income Tax assets and Liabilities (current and deferred), (iii) give effect to the Buyer Release and the Seller Release as though they had been executed immediately prior to the Effective Time and (iv) reduce Net Book Value by the amount, if any, by which the Discount Amount exceeds the Impairment Charge. The Impairment Charge shall mean the impairment charge with respect to the Business arising after April 20, 2003 as reflected in the audited financial statements for the fiscal year ended May 25, 2003 referred to in Section 9.15 of this Agreement so long as the impairment charge pertains to the write-off of no more than \$36,343,582 of goodwill. If the impairment charge pertains to the write-off of more than \$36,343,582 in goodwill, then for purposes of this definition, the impairment charge shall be reduced by an amount equal to the excess of the goodwill write-off included in the impairment charges over \$36,343,582. Buyer shall consult with Seller in good faith in connection with the preparation of the Preliminary Closing Balance Sheet and employees of Seller shall be permitted to meet

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with employees of Buyer and the Acquired Companies in connection with the preparation of the Preliminary Closing Balance Sheet.

- (b) Promptly following execution of this Agreement, Seller shall engage Deloitte to (i) audit the Preliminary Closing Balance Sheet in accordance with the Applicable Accounting Principles (the Audit ), and (ii) upon completion of the Audit, deliver to Seller and Buyer its draft preliminary audit report in the form attached hereto as Exhibit 5.1(b) (the Report ) together with the accompanying draft audited balance sheet of the Acquired Companies (the Preliminary Audited Closing Balance Sheet ), and a revised calculation of Adjusted Net Book Value. Seller shall instruct Deloitte to complete the Audit and issue its Report and revised calculation of Adjusted Net Book Value within sixty (60) days after its receipt of the Preliminary Audited Closing Balance Sheet. Buyer and Seller acknowledge and agree that Deloitte shall not issue its final audit report until all objections have been resolved in accordance with Section 5.1(d) and such resolution is incorporated into the Preliminary Audited Closing Balance Sheet. Seller shall pay or cause to be paid all of the fees and expenses of Deloitte in connection with the Audit and the Report.
- (c) Buyer shall provide, and shall cause the Acquired Companies to provide, to Deloitte such assistance and access to employees, books, records and other supporting documents as is necessary for Deloitte to timely conduct the Audit and prepare, issue and deliver the Report and the Preliminary Audited Closing Balance Sheet. Buyer and Seller and their respective representatives (including without limitation Buyer's independent auditors) shall have the right to be present to observe the taking of any physical inventory, or perform any other audit activity in connection with or separate and apart from Deloitte's audit activity necessary to issue an independent audit opinion on the Closing Balance Sheet on behalf of Buyer, in connection with Deloitte's preparation of the Preliminary Audited Closing Balance Sheet and may review and examine the procedures, books, records and work papers used in their preparation, or conduct such independent review, or any other audit activity as they deem necessary.
- (d) Unless Seller or Buyer notifies the other party in writing within sixty (60) calendar days after delivery of the Preliminary Audited Closing Balance Sheet and revised calculation of Adjusted Net Book Value that such party objects to the calculation contained therein, specifying in detail each objection and the basis for each objection, the Preliminary Audited Closing Balance Sheet shall be issued in final form by Deloitte and such Preliminary Audited Balance Sheet and revised calculation of Adjusted Net Book Value shall be final and binding upon the parties. Neither Seller nor Buyer shall have the right to dispute the principles and procedures used in the preparation of the Preliminary Audited Closing Balance Sheet so long as the principles and procedures used are consistent with the Applicable Accounting Principles; provided that the foregoing shall in no event effect the right of Seller or Buyer to object to any estimates or judgments made in connection with the preparation of the Preliminary Audited Closing Balance Sheet. If Buyer and Seller are unable to resolve the disputed items within thirty (30) calendar days after any such notification has been given (or within such extended time period as is mutually agreed to by the parties), the unresolved disputed items shall be referred for a final determination to a mutually acceptable independent accountant. Such determination shall be final and binding upon the parties, absent manifest error. Such accountant shall be jointly retained by the parties hereto on a mutually acceptable basis and Buyer and Seller shall each pay one-half of the fees and expenses of such accountant. Promptly following the date that Seller and Buyer reach agreement upon the disputed items pursuant to Section 5.1(d), or, if applicable, the date of the final determination of such accountant of the disputed items pursuant to Section 5.1(d), the parties shall cause such resolution to be incorporated into the Preliminary Audited Closing Balance Sheet and shall cause Deloitte to issue its final audit report and final revised calculation of Adjusted Net Book Value. The Preliminary Audited Closing Balance Sheet, as may be adjusted pursuant to the terms hereof (the Final Closing Balance Sheet ), and Deloitte's final

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revised calculation of Adjusted Net Book Value, as appropriately modified to reflect any changes (the Final Adjusted Net Book Value Calculation ), shall be final, binding and conclusive for all purposes hereunder.

- 5.2 **Settlement of Purchase Price.** On the second business day following (i) the expiration of sixty (60) calendar days following delivery of the Preliminary Audited Closing Balance Sheet to Buyer and Seller if neither Seller nor Buyer has objected to the Preliminary Audited Closing Balance Sheet, or (ii) if either Seller or Buyer shall have objected to the Preliminary Audited Closing Balance Sheet, final determination of the disputed items pursuant to Section 5.1(d), Buyer shall deliver to Seller a revised Subordinated Promissory Note in exchange for the Subordinated Promissory Note delivered to Seller at Closing, which Seller shall deliver to Buyer for cancellation. Such revised Subordinated Promissory Note will reflect the principal outstanding equal to the Final Adjusted Net Book Value, less the sum of (i) the Share Amount, (ii) the Cash Payment and (iii) the Share Price Adjustment, if applicable pursuant to Section 3.3.4 (such difference being referred to as the Adjustment Amount ). This revised Subordinated Promissory Note shall otherwise be on the same terms and conditions as the Subordinated Promissory Note delivered by Buyer to Seller and substituted for the Subordinated Promissory Note delivered by Buyer at Closing. As used herein, Final Adjusted Net Book Value shall mean Net Book Value, as of the Closing Date, as reflected in the Final Adjusted Net Book Value Calculation. If the Adjustment Amount is a negative number, then Seller shall promptly pay to Buyer an amount of cash equal to the Adjustment Amount and return to Buyer for cancellation the Subordinated Promissory Note delivered by Buyer to Seller at Closing. To the extent the revised Subordinated Promissory Note shall have a principal amount that is less than the principal amount of the Subordinated Promissory Note delivered by Buyer at Closing, Seller shall refund to Buyer any interest previously paid by Buyer on such excess amount, and shall cancel any accrued but unpaid interest payable by Buyer on such excess amount (or, if not permitted by the Subordinated Promissory Note, repay to Buyer such interest after payment of such interest by Buyer) with respect to periods ending prior to the date of substitution. To the extent the revised Subordinated Promissory Note shall have a principal amount that exceeds the principal amount of the Subordinated Promissory Note delivered by Buyer at Closing, Buyer shall pay to Seller, on the next succeeding interest payment date under the terms of the Subordinated Promissory Note, interest at the rate specified in the Subordinated Promissory Note on the amount of such difference with respect to the period beginning on the Closing Date and ending prior to the date of substitution. Seller agrees that it shall not sell or otherwise transfer the Subordinated Promissory Note until the Final Adjusted Net Book Value is determined in accordance with this Section 5.2 and the exchange of notes contemplated by this Section 5.2 has occurred.

**6. Employee Matters.**

**6.1 General.**

- (a) **Continued Employment.** As of the Effective Time, Buyer will cause the Acquired Companies to provide continuation of employment to each individual employed by any of the Acquired Companies (or otherwise in connection with the Business) on the Closing Date (including employees absent from work due to short-term or long term disability, sick leave, military leave or other employer approved absences of a short duration) other than those employees employed in connection with the Retained Businesses (the Company Employees ). Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit Buyer from terminating or changing the terms of employment of any Company Employee after the Effective Time. Notwithstanding the preceding, Company Employees on long term disability on the Closing Date ( Disabled Company Employees ) will continue to be provided long term disability benefits under the Seller's long term disability plan, subject to the terms and conditions of such plan, as long as the Disabled Company Employee meets the conditions for benefits.



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- (b) **Retention Bonuses.** Buyer shall be responsible for and pay the Buyer Retention Obligations, provided that Buyer's maximum aggregate liability for Buyer Retention Obligations shall be \$2,925,798. Seller shall be responsible for and pay the Seller Retention Obligations and any Buyer Retention Obligations that exceed \$2,925,798. Buyer shall be responsible for and pay any other liabilities, obligations and claims of any kind arising out of employment (or termination of employment, whether actual or constructive) of the Company Employees on and after the Closing Date resulting from actions taken by Buyer. Seller agrees that, from and after the Closing, it will not consent to the termination of any Company Employee's employment and that in the event prior to the first anniversary of the Closing any Company Employee voluntarily terminates his employment with an Acquired Company, then upon the written request of Buyer, Seller will assign to Buyer any rights Seller may have to recover any Transaction Bonuses paid to such Company Employee.
- (c) **COBRA.** Seller agrees to maintain the group health plan continuation coverage pursuant to Section 4980B of the Code and Sections 601-609 of ERISA for the qualifying beneficiaries (within the meaning of Section 4980B of the Code) and Company Employees who are covered employees (within the meaning of Section 4980B(f)(7) of the Code) who experience a qualifying event (within the meaning of Section 4980B(f)(3) of the Code) prior to the Closing Date (COBRA Participants). Subject to the terms of the Transition Services Agreement, the parties agree that any Company Employee or qualifying beneficiaries who becomes eligible for COBRA for the period between the Closing Date and the later of (i) December 31, 2003 and (ii) 120 days after the Closing Date shall receive COBRA benefits from certain benefit plans which will continue to be maintained by the Seller. Buyer shall reimburse Seller for all costs and expenses incurred by Seller to maintain continuation coverage for the COBRA Participants as reasonably determined by Seller. Buyer shall indemnify and hold Seller and Seller's Affiliates harmless from and against any Liability Seller or Seller's Affiliates incur at any time after Closing under the provisions of Section 4980B of the Code or Sections 601-609 of ERISA with respect to any covered employee who is a Company Employee, or the qualified beneficiary of any such employee, who has a qualifying event on or after the Closing Date.

**6.2 Seller Pension Plans.**

- (a) **Non-Union Employees.** As of the Closing Date, the Company Employees whose benefits are not governed by a collective bargaining agreement shall cease to actively participate in any pension plan offered by Seller, any Acquired Company or any subsidiary thereof, including but not limited to, (a) the ConAgra Pension Plan for Salaried Employees and (b) the ConAgra Pension Plan for Hourly Rate Production Employees, in each case pursuant to the provisions in the plan documents and not because of any amendment to either of the aforementioned pension plans. The non-union Company Employees described in the preceding sentence shall receive no further benefit accrual under said pension plans.
- (b) **Union Employees.** As of the Closing Date, the Company Employees whose pension benefits are governed by a collective bargaining agreement shall cease to actively participate in any pension plan offered by Seller, any Acquired Company or any Subsidiary thereof and shall receive no further benefit accrual thereunder. As of the Closing Date, Buyer shall become the plan sponsor of the Retirement Income Plan of Production Employees of Seaboard Farms of Chattanooga, Inc. (the Chattanooga Plan) with respect to the Company Employees participating in that plan and no further benefits shall accrue thereunder with respect to any other employees of Seller and its Affiliates. To the extent any Company Employee whose benefits are governed by a collective bargaining agreement is entitled to receive pension benefits under a defined benefit plan after the Closing Date in accordance with the terms of the applicable collective bargaining agreement, Buyer will provide such Company Employee his or her accrued benefit (under the Chattanooga Plan) less any benefit accrued under a defined benefit pension plan of Seller as of the Closing Date. Notwithstanding the foregoing, if a Company Employee, whose pension benefits are governed by a collective bargaining agreement, is not vested in his or her accrued benefit

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under a defined benefit pension plan of Seller and if the vesting requirements are subsequently met under a defined benefit pension plan of Buyer, then Seller shall cause the benefit accrued under Seller's pension plan to be paid to such Company Employee as if that benefit was fully vested as of the Closing. As of the Closing, Seller will provide Buyer with a list of Company Employees, whose benefits are governed by a collective bargaining agreement, that are entitled to an accrued benefit under a pension plan of Seller and the dollar amount of such benefit as of the Closing Date. As of the Closing Date, the union Company Employees at the facilities located in Batesville and Clinton, Arkansas shall receive no further benefit accruals under the Banquet Employees Unions Pension Fund. Seller shall amend the Pension Plan for Employees of Country Pride, a frozen defined contribution plan, (the Frozen Plan) so that, on or before the Closing Date, it shall become the sponsor of that Frozen Plan and the Company Employees will be eligible to receive a distribution of their accounts in the Frozen Plan within a reasonable period after the Closing Date. Seller and Buyer shall cooperate in preparing communications to Company Employees regarding the distribution and their rollover options, including Buyer's 401(k) plan.

- 6.3 **401(k) Plans.** As of the Closing Date, the Company Employees shall cease to actively participate in the ConAgra Retirement Income Savings Plan and the ConAgra Retirement Income Savings Plan for Hourly Rate Production Employees (the Seller 401(k) Plans) and no further contributions shall be made to the Seller 401(k) Plans for the benefit of the Company Employees. As of the Closing Date, the interests of the Company Employees in the Seller 401(k) Plans shall be one hundred percent (100%) vested and shall be fully nonforfeitable. Except as expressly set forth herein, no assets of the Seller 401(k) Plans shall be transferred to Buyer or any of its Affiliates or to any plan of Buyer or any of its Affiliates. As soon as practical following receipt by Buyer and Seller of favorable determination letters or Buyer's certification to Seller, and Seller's certification to Buyer, in a manner reasonably acceptable to both Seller and Buyer, that Buyer's 401(k) Plan and Seller's 401(k) plans are qualified under the applicable provisions of the Code, and contingent on Buyer's 401(k) Plan administrator's ability to accept an in-kind transfer of the assets (except for shares of Seller's stock) and Seller's 401(k) Plan's ability to make an in-kind transfer of assets, Seller shall cause the trustee of Seller's 401(k) Plans to transfer, solely in the form of the mutual funds currently available, cash from the sale of Seller's stock, or notes representing outstanding participant loans or assets representing the full account balances of the Company Employees, and upon such transfer, Buyer and Buyer's 401(k) Plan shall be responsible for proper administration of such account balances and the related liability to the Company Employees.
- 6.4 **Welfare Plans.** The parties acknowledge that the Company Employees participate in Seller's welfare benefit plans and programs disclosed in Exhibit 7.17.1. Subject to the terms of the Transition Services Agreement, the parties agree for the period between the Closing Date and the later of (i) December 31, 2003 and (ii) 120 days after the Closing Date the Company Employees will continue their participation in certain specified welfare plans and programs that provide health, disability, life and other insurance type benefits, which will continue to be maintained by Seller. In accordance with the terms of the Transition Services Agreement Buyer agrees to reimburse Seller for all costs and expenses (as reasonably determined by Seller) to maintain the continued participation in such plans, and Seller agrees to modify its welfare plans to permit the continued participation by the Company Employees after the Closing Date. After the later of (i) December 31, 2003 and (ii) 120 days after the Closing Date, Buyer shall provide those welfare benefits to the Company Employees as Buyer deems appropriate. On and after the Closing Date, Buyer shall be responsible, and shall indemnify and hold Seller and its Affiliates harmless from and against, all Liabilities with respect to such welfare benefit plans and programs, including, but not limited to, any Liability under the Worker Adjustment and Retraining Notification Act (29 U.S.C. Sections 2101-2109) or any similar foreign, state or local laws or ordinances (such laws collectively described as the WARN Act). Prior to the Closing Date, Seller will cooperate with the reasonable request of Buyer, to provide notices and other communications to Company Employees in order to avoid Liability under the WARN Act.
- 6.5 **Buyer Plans.** Buyer shall cause periods of service with Seller, Seller's Affiliates and the Acquired Companies to count for purposes of eligibility and vesting under any benefit plan provided to the

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Company Employees after the Closing Date. After the Closing Date, Buyer shall cause the Acquired Companies to waive pre-existing condition requirements, evidence of insurability provisions, waiting period requirements or any similar provisions under any employee benefit plan providing medical, disability or life insurance benefits provided to any Company Employees enrolled in such plans of the Seller as of the Closing Date. After the Closing Date, Buyer shall also cause the Acquired Companies to apply toward any deductible requirements and out of pocket limits under its employee welfare benefit plans any amounts paid (or accrued) by each Company Employee prior to Closing under welfare benefit plans during the then current Plan Year and Seller shall provide the relevant Plan Year deductible and out of pocket amounts paid (or accrued) by each Company Employee.

- 6.6 **Flexible Spending Accounts.** Seller maintains a plan qualified under I.R.C. Section 125 ( Seller's 125 Plan ) that includes flexible spending accounts for medical care reimbursements and dependent care reimbursements ( Reimbursement Accounts ). As soon as reasonably practicable following the Closing Date, cash equal to the aggregate value of the Reimbursement Accounts of the Company Employees shall be transferred from Seller to a plan established by Buyer intended to qualify under I.R.C. Section 125 ( Buyer's 125 Plan ) and the annual election and claims history for each Company Employee participating in the Reimbursement Accounts shall be provided to Buyer not later than the date of the cash transfer. Upon receipt of such amount, Buyer and Buyer's 125 Plan shall assume all obligations and liabilities with respect to the Reimbursement Accounts for the Company Employees. Buyer shall recognize the elections of the Company Employees under Seller's 125 Plan for purposes of Buyer's 125 Plan for calendar year 2003.
- 6.7 **Retained Employees.** All employees of the Retained Businesses shall be transferred out of the Acquired Companies prior to Closing.
- 6.8 **Cooperation.** The parties shall cooperate with each other and exchange any information, filings or notices as appropriate to implement the provisions of this Section 6. Buyer shall assist in providing any information, filings or notices (including the notice required by Section 204(h) of ERISA and Section 4980F of the Code) as needed to cease the benefit accruals. Seller agrees to hold Buyer harmless for any Liability for any failure to comply with the provisions of Section 204(h) of ERISA and Section 4980F of the Code.
- 6.9 **Indemnity.** Buyer shall indemnify and hold Seller and Seller's Affiliates harmless from and against any Liability resulting directly or indirectly from any breach or nonfulfillment of any agreement or covenant on the part of Buyer or the Acquired Companies under this Section 6.
- 6.10 **No Third Party Beneficiaries.** Nothing in this Agreement shall create or establish, or be deemed to create or establish, any Company Employee as a third party beneficiary of this Agreement.
- 6.11 **Notice Obligations.** Seller and Buyer shall cooperate with respect to any notice obligation, disclosure requirement, or employee communication that is necessary or appropriate as a result of this transaction with respect to any Employee Plan that affects a Company Employee.

7. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer as set forth below. Such representations and warranties are made subject to those matters set forth in the Seller Disclosure Schedule dated as of the date hereof and delivered as a separate document (the Seller Disclosure Schedule ) in the manner provided for in the introductory paragraph of the Seller Disclosure Schedule and those matters set forth in the schedules are subject to the terms of Section 14.11.

- 7.1 **Organization, Good Standing and Corporate Power.** Each of Seller and the Acquired Companies is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Each of the Acquired Companies has the corporate power to own, operate and lease its properties and to carry on its business as now being conducted. Each Acquired

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Company is qualified to conduct the Business in all jurisdictions in which such qualification or authorization is required, except for those jurisdictions in which failure to be so qualified or authorized has not had and will not have a Company Material Adverse Effect.

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- 7.2 **Certificate and By-Laws.** Seller has previously made available to Buyer complete and correct copies of the certificate or articles of incorporation and by-laws of each of the Acquired Companies as in effect as of the date of the Agreement (collectively, Charter Documents ). Such Charter Documents have not been further amended and are in full force and effect. The Seller Disclosure Schedule contains a complete and accurate list of all officers and directors of each of the Acquired Companies.
- 7.3 **Corporate Authorization; Binding Effect.** Seller has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements by Seller have been duly and validly authorized by all necessary corporate action on the part of Seller and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby. This Agreement constitutes, and the Ancillary Agreements when executed by Seller will constitute, the valid and binding obligations of Seller enforceable against Seller in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity.
- 7.4 **Effect of Agreement.** The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller and the consummation by Seller of the transactions contemplated hereby and thereby will not, with or without the giving of notice or the lapse of time or both, assuming compliance with the matters referred to in Section 7.5: (a) violate any Law to which Seller or any Acquired Company is subject; (b) violate any judgment, order, writ or decree of any court applicable to Seller, or any Acquired Company; (c) conflict with or result in the violation of any provision of Seller's or any Acquired Company's Charter Documents, or (d) result in any violation of, or default under, or give rise to a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Seller or any of its Subsidiaries is bound or affected, or result in the creation of any Encumbrance upon the Stock or any of the properties or assets of the Acquired Companies, other than any such violation, conflict, default, right, cancellation or acceleration, loss or Encumbrance that, individually or in the aggregate, would not have a material adverse effect on the business, operations, financial condition, results of operations, or capitalization of the Business or on the ability of Seller or Buyer to consummate the transactions contemplated by this Agreement.
- 7.5 **Government Authorization.** The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreements requires no action by or in respect of, or filing with, any Governmental Authority other than: (a) the filing of a pre-merger notification report under the HSR Act; and (b) such consents, authorizations, orders, approvals, filings or registrations the failure of which to be obtained or made would not have a material adverse effect on the business, operations, financial condition, results of operations or capitalization of the Business, or prevent the consummation of the transactions contemplated hereby.
- 7.6 **Capital Stock; Title to Shares.** The authorized capital stock of CPC consists solely of 10,000 shares of common stock, \$1.00 par value, of which 10,000 shares are issued and outstanding. Seller is the lawful and equitable owner of all of such shares of common stock of CPC, free and clear of all claims, options, charges and Encumbrances. The authorized capital stock of To-Ricos consists solely of (i) 100,000 shares of common stock, \$1.00 par value, of which 66,000 shares are issued and outstanding, and (ii) 50,000 shares of preferred stock, \$10.00 par value, of which none are issued and outstanding. Seller is the lawful and equitable owner of all of such shares of common stock of To-Ricos, free and clear of all claims, options, charges and Encumbrances. The authorized capital stock of Lovette consists solely of (i) 500,000 shares of common stock, \$1.00 par value, of which 1,000 shares are issued and outstanding. Seller is the lawful and equitable owner of all of such shares of common stock of Lovette, free and clear of all claims, options, charges and Encumbrances. The authorized capital stock of Hester consists solely of 15,000 shares of common stock, \$1.00 par value, of which 1,000 shares are issued and outstanding. Seller is the lawful and equitable owner of all of such shares of common stock of Hester, free and clear of all claims, options, charges and

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Encumbrances. At the Closing, Buyer's ownership of CPC, To-Ricos, Lovette and Hester as contemplated herein shall constitute ownership of all the outstanding securities of CPC, To-Ricos, Lovette and Hester and, through Buyer's ownership of the CPC Stock, the Company Subsidiary, and such ownership shall be free and clear of all claims, options, charges and Encumbrances. No shares of capital stock or other ownership interests in any Acquired Company are reserved for issuance for any purpose. As to each Acquired Company, there are no bonds, debentures, notes or other indebtedness issued or outstanding having the right to vote (Voting Debt) on any matter on which holders of capital stock, voting securities or other ownership interests thereof may vote. All of the issued and outstanding shares of the capital stock of CPC, To-Ricos, Lovette, Hester and the Company Subsidiary are duly authorized, validly issued, fully paid and nonassessable and have not been issued in violation of any preemptive or similar rights. There are no options, warrants, calls, rights, commitments or agreements of any character to which CPC, To-Ricos, Lovette, Hester or the Company Subsidiary is a party by which it is bound or obligated to issue, deliver or sell, or caused to be delivered or sold, additional shares of capital stock, voting securities or other ownership interests or any Voting Debt, or obligating any Acquired Company to grant, extend or enter into any such option, warrant, call, right, commitment or agreement. There are no outstanding contractual obligations of any Acquired Company to repurchase, redeem or otherwise acquire any shares of its capital stock.

**7.7 Subsidiaries.**

7.7.1 The Company Subsidiary and its jurisdiction of incorporation are identified on the Seller Disclosure Schedule. The Company Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and it has the corporate power to own, operate and lease its properties and to carry on its business as now being conducted. The Company Subsidiary is qualified to conduct its business in all jurisdictions in which such qualification or authorization is required, except for those jurisdictions in which failure to be so qualified or authorized would not have a Company Material Adverse Effect.

7.7.2 All of the outstanding capital stock of, or other ownership interests in, the Company Subsidiary, is owned by CPC, free and clear of all claims, options, charges and Encumbrances, and all of the outstanding shares of capital stock or other equity interests of the Company Subsidiary are validly issued, fully paid and nonassessable.

**7.8 Financial Statements; No Undisclosed Liabilities.**

7.8.1 Seller has heretofore delivered to Buyer (i) pro forma combined, consolidated balance sheets of the Business as of May 28, 2000, May 27, 2001 and May 26, 2002, and the related combined, consolidated statements of earnings for each of the years then ended (the Year-end Statements), and (ii) a pro forma combined, consolidated balance sheet of the Business as of April 20, 2003, and the related combined consolidated statements of earnings for the eleven (11) month period then ended (the Interim Financials). The Year-end Statements and the Interim Financials (together, the Financial Statements) present fairly, in all material respects, the financial position, results of operation of the Business as of the dates and for the periods then ended, and have been prepared in accordance with GAAP and the Applicable Accounting Principles, except in the case of the Interim Financials, for normal year-end adjustments that are not material and the omission of footnote disclosures required by GAAP. The Year-end Statements for 2001 and 2002 and the Interim Financials do not contain any material (individually or in the aggregate) items of non-recurring income required by GAAP to be separately disclosed.

7.8.2 As of the date hereof, to Seller's knowledge, none of the Acquired Companies has any Liabilities of a type required to be reflected on a balance sheet prepared in accordance with GAAP consistently applied except those (i) set forth or provided for in the balance sheet (including notes thereto) included in the Interim Financials, (ii) incurred since April 20, 2003, in the ordinary course of business, or (iii) recorded as part of normal year end adjustments. Notwithstanding the foregoing, no representation and warranty is made

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pursuant to this Section 7.8.2 with respect to any matter that is specifically addressed by another representation or warranty contained in this Section 7 or any certificate or instrument delivered pursuant to this Agreement. As of the date hereof, except for such matters that would not have a Company Material Adverse Effect, (i) the receivables of the Business, either reflected on the Interim Financials or created subsequent to April 20, 2003 were created in the ordinary course of the Business, (ii) to the knowledge of Seller and subject to any reserves established therefor in the applicable financial statements, will be collected in accordance with their terms and at their recorded amounts, in accordance with the Business' prior practices, and (iii) between April 20, 2003 and the date hereof, to the knowledge of Seller, neither Seller nor any of its Affiliates has (a) permitted or agreed to any extension in the time for payment of receivables relating to the Business other than in the ordinary course of business and consistent with past practice or (b) changed its policies or practices with respect to the extension of credit to customers of the Business other than in the ordinary course of business and consistent with past practice.

7.9 **Conduct of Business Since April 20, 2003.** Since April 20, 2003 and except for the transactions contemplated herein:

7.9.1 As of the date hereof, there has not been a Company Material Adverse Effect.

7.9.2 As of the date hereof, no event has occurred that would have been prevented by Section 9.1.1 if the terms of said Section had been in effect as of and after April 20, 2003.

7.9.3 Except for indebtedness owed by an Acquired Company to Seller or a subsidiary thereof (which will be released prior to Closing to the extent provided in the Seller Release), none of the Acquired Companies has incurred or assumed any indebtedness for borrowed funds or purchase money indebtedness, or assumed, guaranteed, endorsed or otherwise become liable or responsible (either directly, contingently or otherwise), for the obligations of any other Person, except in respect of such assumption, guarantees or endorsements for such amounts that are immaterial and incurred in the ordinary course of Business.

7.10 **Taxes and Tax Returns.**

(a) With respect to the Acquired Companies; (i) all material Tax Returns required to be filed by them have been filed, (ii) all Taxes shown to be due on such returns have been paid or accrued, (iii) all Taxes for which a notice of assessment or collection has been received (other than amounts being contested in good faith by appropriate proceedings), have been paid or accrued. No Governmental Authority has asserted any material claim for Taxes, or to the Seller's knowledge has threatened to assert any material claim for Taxes.

(b) The statute of limitations has closed for all Tax Returns of the Acquired Companies.

(c) All material Taxes required by law to be withheld or collected with respect to the Acquired Companies have been withheld or collected and paid to the appropriate Governmental Authorities (or are properly being held for such payment).

(d) There are no liens for Taxes upon the material assets of the Acquired Companies (other than Liens for Taxes that are not yet due and payable).

(e) None of the assets of the Acquired Companies are considered tax-exempt use property or tax-exempt bond financed property within the meaning of sections 168(g)(1)(B) or (C) of the Code.

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- (f) To Seller's knowledge, To-Ricos is an existing credit claimant within the meaning of Section 936(j)(9)(A)(i) of the Code. To-Ricos has had in effect an election under Section 936(a) of the Code during the ten taxable years ending immediately prior to the taxable

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year that includes the Closing Date. Such election has not been revoked during such ten year period.

- (g) All Tax Returns filed by To-Ricos with any Puerto Rican Governmental Authority are true and correct in all material respects.
- (h) To Seller's knowledge, none of the Acquired Companies has a material taxable presence in any jurisdiction where they do not file a Tax Return.
- (i) The Acquired Companies have not made or become obligated to make, and will not as a result of the transactions contemplated hereby become obligated to make, any payments that could be nondeductible by reason of Section 280G (without regard to subsection (b)(4) thereof) or 162(m) of the Code, nor will any Acquired Company be required to gross up or otherwise compensate any individual because of the imposition of any excise tax on such a payment to the individual.

- 7.11 **Intellectual Property.** The Acquired Companies own, or possess adequate licenses or other rights to use (or will as of the Closing Date own or possess adequate licenses or other rights to use), all material Intellectual Property Rights currently used or necessary to conduct the Business as now operated by them. Without limitation to the foregoing, the Acquired Companies own (or will as of the Closing Date own) the trademarks and related Intellectual Property Rights described in Section 7.11 of the Seller Disclosure Schedule and those trademarks include the only material trademarks used in the Business (other than the Retained Intellectual Property). To the knowledge of Seller, and other than such infringements that would not have a Company Material Adverse Effect, (i) the Intellectual Property Rights of the Acquired Companies currently used to conduct the Business do not infringe upon any Intellectual Property Rights of others, and (ii) no third party is infringing on the Intellectual Property Rights of any of the Acquired Companies currently used to conduct the Business. For purposes of this Agreement, Intellectual Property Right means any trademark, service mark, trade name, mask work, copyright, patent, software license, data base, invention, trade secret, know-how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right.
- 7.12 **Actions and Proceedings.** As of the date hereof, there are no outstanding orders, judgments, injunctions, awards or decrees of any Governmental Authority against any of the Acquired Companies other than those that would not have a Company Material Adverse Effect. As of the date hereof, there are no actions, suits or legal, administrative, regulatory or arbitration proceedings pending or, to the knowledge of Seller, threatened against any Acquired Company that, if adversely determined, would result, individually or in the aggregate, in a Company Material Adverse Effect. As of the date hereof, none of the Acquired Companies nor any property or asset of any of them is subject to (other than as apply to the poultry industry in general) or in violation of any order, executive order, writ, stay, decree, judgment, determination, award or injunction that could reasonably be expected to have a Company Material Adverse Effect.
- 7.13 **Compliance with Laws.** As of the date hereof, except for such matters that would not have a Company Material Adverse Effect, (i) each of the Acquired Companies holds, owns or possesses, and is in compliance with the terms of, all permits, licenses, exemptions, orders and approvals of all Governmental Authorities (other than Environmental Permits, which are exclusively provided for in Section 7.18) necessary for the conduct of their respective businesses and to own, lease and operate their respective properties (the Company Permits ), (ii) with respect to the Company Permits, no action or proceeding is pending or, to the knowledge of Seller, threatened, by any Governmental Authority, (iii) the Business is being conducted in compliance with all applicable Laws, and (iv) no investigation or review by any Governmental Authority with respect to an Acquired Company is pending or, to the knowledge of Seller, threatened.
- 7.14 **Material Contracts.** The Seller Disclosure Schedule sets forth, as of the date hereof, a listing of all of the following written agreements to which any of the Acquired Companies is a party to or bound by: (a) employment agreement with an individual requiring payments of compensation in excess of



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\$50,000 per year; (b) consulting agreement with an individual requiring payments of compensation in excess of \$50,000 per year; (c) material distributor agreement which is not terminable on ninety (90) days (or less) notice; (d) joint venture, partnership or similar contract or agreement or equity or debt investment agreements; (e) contracts which are terminable by the other party or parties thereto upon a change of control of an Acquired Company, other than such contracts the termination of which would not, individually or in the aggregate, have a Company Material Adverse Effect; (f) contracts or agreements that limit or purport to limit the ability of an Acquired Company to compete in any line of business or in any geographic area; (g) any contracts or agreements between or among any of the Acquired Companies, on the one hand, and Seller or its other Subsidiaries, on the other hand; (h) collective bargaining or labor agreements; (i) leases and licenses of, and options to purchase, real property pursuant to which an Acquired Company is required to pay or is entitled to receive (x) consideration in excess of \$100,000 in any calendar year after December 31, 2002, or (y) consideration in excess of \$200,000 in the aggregate over the remaining term of such lease; (j) agreements, notes, bonds, indentures or other instruments governing indebtedness for borrowed money, and any guarantee thereof or the pledge of any assets or other security therefor; (k) material requirements, take or pay or similar agreements relating to the Business; (l) material powers of attorney or agency agreements of the Business; (m) material feed ingredient contracts or commodity future contracts, option contracts or similar agreements of the Business, including without limitation, all such agreements that extend beyond sixty (60) days from the date hereof; (n) material agreements or arrangements establishing, creating or relating to any rebate, promotion, advertising coupon or other allowance of the Business; (o) material toll processing, co-packing or similar agreement; or (p) other contract, agreement or arrangement involving an estimated total future payment or payments in excess of \$1,000,000 (other than one time purchase orders with respect to raw materials and one time sales contracts relating to the sale of inventory, each in the ordinary course of business). The contracts required to be so listed are referred to herein as the Company Material Contracts. With respect to all Company Material Contracts, (i) all such contracts are the valid and binding obligation of an Acquired Company in full force and effect, (ii) none of the Acquired Companies nor, to Seller's knowledge, any other party to any such Company Material Contract is in material breach thereof, or default thereunder, and (iii) there does not exist under any provision thereof, or any event that, with the giving of notice or the lapse of time or both, would constitute such a breach or default, except for such breaches, defaults and events which in the case of clauses (i), (ii) and (iii) would not, individually or in the aggregate, have a Company Material Adverse Effect. Seller has made available to Buyer true and correct copies of all Company Material Contracts.

7.15 **Related Party Transactions.** The Seller Disclosure Schedule sets forth a description of all material services provided by Seller or its Affiliates to the Business, as well as a description of material sales or purchase relationships between any of the Acquired Companies, on the one hand, and Seller, Seller's other Affiliates or, to the knowledge of Seller, the Acquired Companies' salaried employees having base compensation in excess of \$50,000, on the other hand.

7.16 **Labor Relations.**

7.16.1 Except as set forth in the Seller Disclosure Schedule, none of the Acquired Companies is a party to any collective bargaining agreement or other labor union contract applicable to any Company Employees.

7.16.2 Except for such matters as would not have a Company Material Adverse Effect, as of the date hereof, there are no (i) labor strikes, disputes, slowdowns, representation or certification campaigns or work stoppages with respect to Company Employees pending, or to Seller's knowledge, threatened against or affecting the Business or any Acquired Company, (ii) grievance or arbitration proceedings, letter agreements or settlement agreements arising out of collective bargaining agreements to which an Acquired Company is a party, or (iii) unfair labor practice (within the meaning of the National Labor Relations Act or applicable state statute) complaints pending or, to Seller's knowledge, threatened against an Acquired Company.

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7.16.3 As of the date hereof, except for such matters as would not have a Company Material Adverse Effect, the Acquired Companies are in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours.

7.16.4 Except for such matters as would not have a Company Material Adverse Effect, as of the date hereof, there are, with respect to the Acquired Companies, no lawsuits or pending administrative matters before any federal, state or local courts or agencies regarding violations or alleged violations of any federal, state or local wage and hour law or any federal, state or local law with respect to discrimination or harassment on the basis of sex, age, race, color, creed, national origin, religion, disability or any other protected characteristics under such federal, state or local law or involving allegations by any employee concerning alleged discrimination or harassment based on whistleblower claims involving allegations of fraud, corporate misconduct, financial mismanagement, environmental compliance or similar claims asserted under federal, state or local laws.

7.16.5 To Seller's knowledge, as of the date hereof, there is no activity involving any Company Employees seeking to certify a collective bargaining unit. To Seller's knowledge, as of the date hereof, except as described in the Seller Disclosure Schedule, no executive, key employee, or group of employees has any plans to terminate employment with any Acquired Company.

7.17 **Employee Plans.** For purposes of this Section 7.17, and Sections 6 and 8.15, the term Employee Plan includes all pension, retirement, disability, medical, dental or other health insurance plans, sickness, disability, life insurance or other death benefit plans, profit sharing, deferred compensation, supplemental retirement plan, stock option, bonus or other incentive plans, stock purchase plans, vacation benefit plans, severance plans, employee assistance plans, or other employee benefit plans or arrangements, including, without limitation, any pension plan (Pension Plan) as defined in Section 3(2) of ERISA, and any welfare plan, as defined in Section 3(1) of ERISA, covering: (i) for purposes of this Section 7.17 and Section 6, the Company Employees, former employees, or their dependents, survivors or beneficiaries whether or not legally binding and for which Seller, its Affiliates or any of the Acquired Companies could reasonably have any Liabilities and (ii) for purposes of Section 8.15, Buyer's employees, former employees, or their dependents, survivors or beneficiaries whether or not legally binding and for which Buyer and its Affiliates could reasonably have any Liabilities. Employee Plan shall not include any government sponsored employee benefit arrangements. Except as reflected in the Seller Disclosure Schedule or as would not have, individually or in the aggregate, a Company Material Adverse Effect:

7.17.1 The Seller Disclosure Schedule identifies all of the Employee Plans.

7.17.2 The Seller, the Acquired Companies, each Employee Plan, and the administrator and fiduciaries of each Employee Plan have complied in all material respects with all applicable legal requirements governing each Employee Plan including, but not limited to, the Code, ERISA, HIPAA and the changes made under the Sarbanes-Oxley Act of 2002. No lawsuits or complaints to, or by, any Person are pending with respect to any Employee Plan.

7.17.3 No Employee Plan is currently under audit, examination or investigation by any government agency, including but not limited to the IRS, the SEC or the DOL.

7.17.4 To the best of Seller's knowledge, neither Seller, its Affiliates, the Acquired Companies, an Employee Plan, nor an administrator or fiduciary of any Employee Plan has taken any action, or failed to take any action, that could subject it or him or her or any other Person to any liability for any excise tax, fine or other penalty under applicable laws or for breach of fiduciary duty under ERISA or the Code with respect to or in connection with any Employee Plan.

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- 7.17.5 Neither Seller, their Affiliates, the Acquired Companies, an Employee Plan, an administrator or fiduciary of any Employee Plan, nor any other Person has any liability to any Employee Plan participant, beneficiary or other Person under any provision of ERISA, the Code or any other applicable law by reason of any payment of benefits or other amounts or failure to pay benefits or any other amounts, or by reason of any credit or failure to give credit for any benefits or rights (such as, but not limited to, vesting rights) with respect to benefits under or in connection with any Employee Plan. Neither Seller, their Affiliates nor any of the Acquired Companies is in arrears with respect to any contributions under or premiums payable for any Employee Plan.
- 7.17.6 Each Pension Plan is qualified under Section 401(a) of the Code, and the trust or trusts maintained in connection with such Pension Plan is or are exempt from tax under Section 501(a) of the Code. A favorable IRS determination letter as to the qualification under the Code has been received for each such Pension Plan and its related trust or trusts and has been, or will be, timely amended for the recent tax changes commonly referred to as GUST, since the date of such determination letter there are no circumstances that are likely to adversely affect the qualification of such Pension Plans, and each such Pension Plan has been, or will be, timely amended to comply with the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001.
- 7.17.7 The Acquired Companies are not and have not at any time during the last six (6) years been a participating employer in or has contributed to any multiemployer plan (as defined in Section 3(37) of ERISA) ( Multiemployer Plan ), or incurred any withdrawal liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan that has not been satisfied in full or has any potential withdrawal liability.
- 7.17.8 None of the Pension Plans have incurred an accumulated funding deficiency as defined in Section 412 of the Code, whether or not waived. Seller has no knowledge with respect to any Multiemployer Plan covering Company Employees that has incurred an accumulated funding deficiency to which it or the Acquired Companies are contributing.
- 7.17.9 No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by the Acquired Companies either directly or indirectly with respect to any ongoing, frozen or terminated single employer plan, within the meaning of Section 4001(a)(14) of ERISA.
- 7.17.10 All accrued obligations of the Acquired Companies for payments by it to trust or other funds or to any governmental or administrative agency, with respect to pension benefits, unemployment compensation benefits, social security benefits or any other benefits for employees of the Acquired Companies have been paid or adequate accruals therefore have been made in the Financial Statements, and none of the foregoing has been rendered not due by reason of any extension, whether at the request of any of the Acquired Companies or otherwise.
- 7.17.11 The Acquired Companies are in material compliance with the requirements of Sections 162(k) (to the extent applicable prior to its amendment by the Technical and Miscellaneous Revenue Act of 1988) and 4980B of the Code and Section 601 of ERISA and no event or condition exists with respect to any welfare plan that could subject the Acquired Companies to any tax under the foregoing sections of the Code and ERISA.
- 7.17.12 With respect to each Employee Plan, except for Employee Plans for which Seller is the plan sponsor as of the Closing Date, Seller has delivered to Buyer complete and correct copies of the following documents, as applicable: (i) the most recent (and prior two (2) years ) annual report (Form 5500) together with 3 years schedules, as required, filed with the IRS or DOL, and any financial statements and opinions required by Section 103(a)(3) of ERISA or, for each top-hat plan, a copy of all filings with the DOL; (ii) the most recent determination letter issued by the IRS; (iii) plan documents, including amendments, trust agreement and the



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most recent summary plan description and all modifications; and (iv) the most recent actuarial valuation, study or estimate of any retiree medical, life insurance or supplemental retirement benefits plan. Notwithstanding the preceding, Seller shall not be required to provide Form 5500 s and related schedules which Seller does not have with respect to the Chattanooga Plan.

7.17.13 Neither Seller, its Affiliates, nor any of the Acquired Companies has any obligation to provide post-retirement medical or other benefits to the Company Employees or former employees of the Acquired Companies or their survivors, dependents and beneficiaries, except as may be required by Section 4980B of the Code or Part 6 of Title I of ERISA or applicable state medical benefits continuation law, and Seller, its Affiliates and the Acquired Companies may terminate any such post-retirement medical or other benefits upon thirty (30) days notice or less without any liability therefore.

7.17.14 Seller and the Acquired Companies have no obligation to any former employee, or any Company Employee under any Employee Plan or otherwise, other than as disclosed in the Seller Disclosure Schedule to this Section 7.17, and any Employee Plan may be terminated as of or after the Closing Date without resulting in any liability to Buyer for any additional contributions, penalties, premiums, fees, fines, excise taxes or any other charges or liabilities.

7.18 **Environmental**. Except for immaterial items and except for items reflected in any Environmental Site Assessments or in the Seller Disclosure Schedule, as of the date hereof:

- (a) The Acquired Companies possess all environmental, health and safety permits, licenses and governmental authorizations (collectively, Environmental Permits ) necessary under applicable Environmental Laws to conduct their business and operations as currently conducted.
- (b) The Acquired Companies are, and at all times have been, in compliance with and have not been and are not in violation of or liable under any applicable Environmental Laws and Environmental Permits, and none of the Acquired Companies has received any written communication from any Person that alleges that any of the Acquired Companies is not in such compliance.
- (c) There are no Environmental Claims pending or, to Seller s knowledge, threatened, against any of the Acquired Companies, in either case arising out of (i) any real property currently or formerly owned, leased or operated by any of the Acquired Companies, (ii) any current or former operations of any of the Acquired Companies, or (iii) any other properties and assets (whether real, personal or mixed) in which any of the Acquired Companies has or had an interest.
- (d) None of the Acquired Companies has retained, or assumed, either contractually or by operation of law, any liabilities of which Seller has knowledge arising under applicable Environmental Laws or Environmental Permits.
- (e) (i) Environmental Claims means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, investigations, proceedings or notices of noncompliance or violation (in each case in writing) by any Person, alleging noncompliance, violation or potential liability (including potential responsibility or liability for costs of enforcement, investigation, cleanup, governmental response, removal or remediation, for natural resources damages, property damage, personal injuries or penalties or for contribution, indemnification, cost recovery, compensation or injunctive relief) arising out of, or related to (x) the presence, Release or threatened Release of any Hazardous Materials, or (y) circumstances forming the basis of any violation or alleged violation of, or liability under, any Environmental Law or Environmental Permit.

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- (ii) **Environmental Laws** mean all foreign, federal, state and local laws, rules, regulations, orders, decrees, common law, judgments or binding agreements existing as of the date hereof issued, promulgated or entered into by or with any Governmental Authority, relating to pollution, the environment (including ambient air, surface water, groundwater, soil, land surface or subsurface strata and any other similar medium or natural resource) or protection of human health as it relates to the environment, including laws and regulations relating to Releases or threatened Releases of Hazardous Materials, the prevention or reduction to acceptable levels the Release of Hazardous Materials into the Environment, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, handling of or exposure to Hazardous Materials. Environmental Laws shall also include, but not by way of limitation, the U.S. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).
- (iii) **Hazardous Materials** means: (x) any petroleum or petroleum products, derivatives, fractions or wastes, radioactive materials, wastes or mixtures, asbestos-containing materials and polychlorinated biphenyls; and (y) any other chemical, material, substance or waste the generation, manufacture, processing, distribution, possession, use, treatment, storage or Release of which is prohibited, limited or regulated under any applicable Environmental Law, or defined, designated or classified as hazardous, toxic, a pollutant or a contaminant under any applicable Environmental Law.
- (iv) **Release** means any release, spill, emission, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater, soil, land surface or subsurface strata, any other similar medium or natural resource) or within any building, structure or facility.
- (f) This Section 7.18 contains the exclusive representations and warranties of Seller with regard to Environmental Claims, Environmental Laws, Environmental Permits and any other environmental matters in this Agreement.

7.19 **Sufficiency of Assets.** Except for the services to be provided pursuant to the Transition Services Agreement, and except for the assets, systems and personnel utilized by Seller or its Affiliates to provide the services pursuant to the Transition Services Agreement, upon consummation of the transactions contemplated under this Agreement, the Acquired Companies, collectively, shall have in all material respects all the personnel, assets, properties, agreements, licenses and services necessary and presently utilized to conduct the Business as presently conducted. Upon consummation of the transactions contemplated by this Agreement, the Acquired Companies will have good and, in the case of real property, marketable title to all material properties, material agreements, material licenses and other material assets owned by Seller and its Affiliates and utilized exclusively in the Business, except for Intellectual Property Rights, which are covered by the representations in Section 7.11, and will have all of the books, records, correspondence, files, customer and vendor lists, sales materials and other data used by Seller's management team based out of Duluth, Georgia or primarily relating to the Business.

7.20 **Absence of Liens.** Except for assets disposed of in the ordinary course of business, each of the Acquired Companies has valid title to or a valid leasehold in, or a contractual or common law right to use, each item of tangible personal property used in the conduct of the Business, free and clear of any Encumbrances, other than Permitted Encumbrances and Encumbrances described in Section 7.21 of the Seller Disclosure Schedule.



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7.21 **Real Estate.**

- (a) The Seller Disclosure Schedule sets forth a list and description of all material real property owned in fee by the Acquired Companies (the Owned Real Property ). With respect to each such parcel of Owned Real Property:
- (i) an Acquired Company has good and marketable title to the parcel of Owned Real Property, free and clear of any Encumbrance, except for Permitted Encumbrances and Encumbrances described in Section 7.21 of the Seller Disclosure Schedule;
  - (ii) as of the date hereof, there are no pending or, to Seller's knowledge, threatened condemnation, expropriation, eminent domain or other similar proceedings, lawsuits or administrative actions relating to the Owned Real Property which materially and adversely affect the current use or occupancy thereof;
  - (iii) there are no outstanding written or, to Seller's knowledge, oral rights, agreements, options or rights of first refusal to purchase the parcel of Owned Real Property, or any portion thereof or interest therein, which have been granted to any other Person;
  - (iv) to Seller's knowledge, there are no parties (other than the Acquired Companies) in possession of or holding any rights to take possession of the parcel of Owned Real Property; and
  - (v) except for any matter which would not materially adversely affect the current use of a parcel of Owned Real Property, to Seller's knowledge, (a) the legal description for the parcel contained in the deed thereof describes such parcel fully and adequately, (b) the buildings and improvements are located within the boundary lines of the described parcels of land, are not in violation of applicable setback requirements, zoning laws, and ordinances (and none of the properties or buildings or improvements thereon are subject to permitted non-conforming use or permitted non-conforming structure classifications), and do not encroach on any easement which may burden the land, (c) the land does not serve any adjoining property for any purpose inconsistent with the use of the land, and (d) the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained.
- (b) The Seller Disclosure Schedule sets forth a list and description of all material real property leased or subleased to the Acquired Companies. Seller has delivered to Buyer correct and complete copies of the leases and subleases listed in the Seller Disclosure Schedule. With respect to each such lease and sublease, except as disclosed in the Seller Disclosure Schedule:
- (i) to Seller's knowledge, such lease or sublease is legal, valid, binding, enforceable, and in full force and effect;
  - (ii) to Seller's knowledge, such lease or sublease will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;
  - (iii) as of the date hereof, none of the Acquired Companies nor, to Seller's knowledge, any other party to the lease or sublease is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a material breach or default or permit termination, modification, or acceleration thereunder;

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- (iv) to Seller's knowledge, no party to the lease or sublease has repudiated any provision thereof;
- (v) as of the date hereof, there are no material disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;
- (vi) to Seller's knowledge, with respect to each sublease, the representations and warranties set forth in subsections (i) through (v) above are true and correct with respect to the underlying lease; and
- (vii) none of the Acquired Companies has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold.

- 7.22 **Brokers and Finders.** Except for Gleacher & Co., Seller has not employed any investment banker, broker or finder or incurred any liability for any brokerage fees, commissions or finders fees in connection with the transactions contemplated by this Agreement.
- 7.23 **Inventory.** Except for such matters that would not have a Company Material Adverse Effect, to Seller's knowledge, the inventory of the Acquired Companies consists of live, raw materials and supplies, manufactured and purchased parts, goods in process, and finished goods, all of which is merchantable and fit for the purpose for which it was procured or manufactured, and none of which is slow-moving, obsolete, damaged, or defective, subject only to applicable reserves. Since April 20, 2003, the inventory of the Acquired Companies has been maintained in all material respects at levels in the ordinary course of business. The inventory of the Acquired Companies existing on the date of the Interim Financials was recorded on the Interim Financials at the lower of its cost or its market value consistent with poultry industry practices.
- 7.24 **Customers.** The Seller Disclosure Schedule sets forth a list of (a) as of the end of the Acquired Companies' three (3) fiscal years ended May 27, 2001, May 26, 2002 and May 25, 2003, respectively, the Business' top 25 customers determined by chicken product sales during such year (the Major Customers ) and (b) for the Acquired Companies' fiscal year ended May 25, 2003, by facility, the amount of revenue and type of product generating such revenue attributable to sales by the Business to operations of Seller that do not constitute the Business (including the Retained Business). Seller has previously provided to Buyer a schedule of each of the Business' long-term pricing commitments for the Major Customers for the fiscal year ending May 30, 2004 in effect as of the date of this Agreement, and no material reduction in any such commitment has occurred between February 23, 2003 and the date of this Agreement. Except as indicated in the Seller Disclosure Schedule, none of the Business' top 25 customers, determined by outstanding receivables as of February 23, 2003, has terminated or materially altered its relationship with the Acquired Companies between February 23, 2003 and the date of this Agreement, or, to Seller's knowledge, threatened to do so or otherwise notified any Acquired Company of its intention to do so, and there has been no material dispute with any of such customers between February 23, 2003 and the date of this Agreement.
- 7.25 **No Other Business.** As of the Closing, the Acquired Companies will not have (a) any material amount of assets or Liabilities that do not primarily relate to the Business or (b) any employees that have not historically spent substantially all of their time performing services for the Business
- 7.26 **OSHA Matters.** As of the date hereof, there are no pending citations against the Acquired Companies under any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, or any program, whether government or private, designed to provide safe and healthful working conditions, including the Occupational Safety and Health Act (OSHA) (collectively, OSHA Laws ) or state equivalent other than those that would not have a Company Material Adverse Effect. As of the date hereof, to Seller's knowledge, none of the Acquired Companies is in violation of any OSHA Laws that could reasonably be expected to have a Company Material Adverse Effect. This Section 7.26 contains the exclusive



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representations and warranties of Seller with regard to OSHA Laws, and any violation thereof or other matter related thereto, in this Agreement.

**8. Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller as set forth below. Such representations and warranties are made subject to those matters set forth in the Buyer Disclosure Schedule dated as of the date hereof and delivered as a separate document (the Buyer Disclosure Schedule ) in the manner provided for in the introductory paragraph of the Buyer Disclosure Schedule and those matters set forth in the schedules are subject to the terms of Section 14.11.

- 8.1 **Organization and Good Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the corporate power and authority to carry on its business as it is now being conducted. Buyer is qualified to conduct business in all jurisdictions in which such qualification or authorization is required or necessary, except for those jurisdictions in which failure to be so qualified or authorized has not had and will not have a Buyer Material Adverse Effect.
- 8.2 **Certificate and By-Laws.** Buyer has previously made available to Seller complete and correct copies of Buyer's Charter Documents. Except for the amendment to Buyer's certificate of incorporation contemplated by Section 9.2.1, such Charter Documents have not been further amended and are in full force and effect. The Buyer Disclosure Schedule contains a complete and accurate list of all officers and directors of Buyer and its Subsidiaries.
- 8.3 **Capitalization.** The authorized capital stock of Buyer consists solely of (i) 100,000,000 shares of Class A Common Stock, par value \$.01 per share, constituting Buyer Class A Common Stock, (ii) 60,000,000 shares of Class B Common Stock, \$.01 par value, constituting Buyer Class B Common Stock, and (iii) 5,000,000 shares of Preferred Stock. The Buyer Class A Common Stock, together with Buyer Class B Common Stock, is referred to as the Buyer Capital Stock. As of March 29, 2003, 13,523,429 shares of Buyer Class A Common Stock were issued and outstanding, 27,589,250 shares of Buyer Class B Common Stock were issued and outstanding, no shares of Buyer's Preferred Stock were issued and outstanding, and no shares of Buyer Capital Stock or Buyer's Preferred Stock were reserved for issuance upon the exercise of outstanding options to purchase Buyer Capital Stock. Buyer's Class A Common Stock is duly listed for trading on the New York Stock Exchange and trades independently of and from Buyer's Class B Common Stock.
- 8.4 **Corporate Authorization: Binding Effect.**
- (a) Buyer has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements by Buyer have been duly authorized by its Board of Directors. This Agreement constitutes, and the Ancillary Agreements when executed by Buyer will constitute, the valid and binding obligations of Buyer enforceable against Buyer in accordance with their terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity.
- (b) Prior to the execution and delivery of this Agreement, the Board of Directors of Buyer (at a meeting duly called and held) has (i) approved this Agreement and the transactions contemplated hereby, (ii) approved the issuance of the Shares to Seller in accordance with this Agreement, (iii) directed and authorized a meeting of the stockholders of Buyer for the purpose of approving the issuance of the Shares, and (iv) determined that the transactions contemplated hereby are fair to and in the best interests of the holders of Buyer Capital Stock.
- (c) Except as contemplated in Section 8.4(b), no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby or thereby.

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- 8.5 **Effect of Agreement.** The execution, delivery and performance of this Agreement and the Ancillary Agreements by Buyer and the consummation by Buyer of the transactions contemplated hereby and thereby will not, with or without the giving of notice or the lapse of time or both, assuming compliance with the matters referred to in Section 8.6, (a) violate any Law to which Buyer is subject; (b) violate any judgment, order, writ or decree of any court applicable to Buyer; (c) conflict with or result in the violation of any provision of Buyer's Charter Documents, or (d) result in any violation of, or default under, or give rise to a right of termination, cancellation or acceleration of any obligation or the loss of a material benefit under, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Buyer or any of its Subsidiaries is bound or affected, or result in the creation of any Encumbrance upon any of the properties or assets of Buyer or any of its Subsidiaries, other than any such violation, conflict, default, right, loss, cancellation or acceleration, or Encumbrance that, individually or in the aggregate, would not have a material adverse effect on the business, operations, financial condition, results of operations, or capitalization of Buyer or on the ability of Seller or Buyer to consummate the transactions contemplated by this Agreement.
- 8.6 **Government Authorization.** No filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or with respect to Buyer or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Buyer or is necessary for the consummation of the transactions contemplated hereby except: (i) in connection, or in compliance, with the provisions of the Securities Act, the Exchange Act and any applicable state securities or "blue sky" law, (ii) under the HSR Act, (iii) in connection, or in compliance with the provisions of federal, state and local tax laws, and (iv) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to obtain or make would not have a material adverse effect on the business, operations, financial condition, results of operations or capitalization of Buyer, or prevent the consummation of the transactions contemplated hereby.
- 8.7 **No Options, Warrants, Rights.** Buyer does not have outstanding Equity Securities other than the Buyer Capital Stock. Neither Buyer nor any of its Subsidiaries has any outstanding commitments to issue or sell any Equity Securities, and no securities or obligations evidencing any such right are outstanding. There are no outstanding obligations, written or otherwise, of Buyer or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Buyer Capital Stock. There are no preemptive rights in respect of any Buyer Capital Stock. Neither Buyer nor any of its Subsidiaries owns any Equity Securities of any Person other than its Subsidiaries. Buyer is not a party to any agreements, arrangements or understandings with respect to the voting, transfer or assignment of the Buyer Capital Stock.
- 8.8 **Subsidiaries.**
- 8.8.1 Buyer's Subsidiaries and their respective jurisdictions of incorporation are identified on the Buyer Disclosure Schedule. Each Subsidiary of Buyer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and each has the corporate power to own, operate and lease its properties and to carry on its business as now being conducted. Each Subsidiary of Buyer is qualified to conduct its business in all jurisdictions in which such qualification or authorization is required, except for those jurisdictions in which failure to be so qualified or authorized would not have a Buyer Material Adverse Effect.
- 8.8.2 Except as identified on the Buyer Disclosure Schedule, all of the outstanding capital stock of, or other ownership interests in, each Subsidiary of Buyer, is owned by Buyer, free and clear of all claims, options, charges and Encumbrances, and all of the outstanding shares of capital stock or other equity interests of each Subsidiary of Buyer are validly issued, fully paid and nonassessable.
- 8.9 **Conduct of Business Since March 29, 2003.** Since March 29, 2003 and except for transactions contemplated herein or set forth on the Buyer Disclosure Schedule:

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- 8.9.1 There has not been a Buyer Material Adverse Effect.
- 8.9.2 No event has occurred that would have been prevented by Section 9.2.1 if the terms of said Section had been in effect as of and after March 29, 2003.
- 8.9.3 Neither Buyer nor any of its Subsidiaries has incurred or assumed any indebtedness for borrowed funds or purchase money indebtedness, or assumed, guaranteed, endorsed or otherwise become liable or responsible (either directly, contingently or otherwise) for the obligations of any other Person, except in respect of such assumption, guarantees or endorsements for such amounts that are incurred in the ordinary course of Buyer's business.
- 8.10 **SEC Documents and Other Reports.** Buyer has filed all documents required to be filed by it and its Subsidiaries with the SEC since September 28, 2000 (the Buyer SEC Documents ). As of their respective dates, or if amended as of the date of the last such amendment, the Buyer SEC Documents complied, and all documents required to be filed by Buyer with the SEC after the date hereof and prior to the Effective Time (Subsequent Buyer SEC Documents ) will comply, in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. The consolidated financial statements (including related notes) of Buyer included in the Buyer SEC Documents fairly present in all material respects, and the consolidated financial statements (including related notes) of Buyer included in the Subsequent Buyer SEC Documents will fairly present in all material respects, the consolidated financial position of Buyer and its consolidated Subsidiaries, as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein and the fact that certain information and notes have been condensed or omitted in accordance with the Exchange Act and the rules and regulations promulgated thereunder) in conformity with GAAP (except in the case of the unaudited statements) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto). Since September 28, 2002, Buyer has not made any change in the accounting practices or policies applied in the preparation of its financial statements, except as may be required by GAAP or disclosed in the Buyer SEC Documents. Except for such matters that would not have a Buyer Material Adverse Effect, (i) the receivables of Buyer, as reflected on the latest financial statements included in the Buyer SEC Documents or created subsequent to the date of such financial statements were created in the ordinary course of Buyer's business, (ii) to the knowledge of Buyer and subject to any reserves established therefor in such financial statements, will be collected in accordance with their terms and at their recorded amounts, in accordance with Buyer's prior practices, and (iii) between the date of such financial statements and the date hereof, to the knowledge of Buyer, neither Buyer nor any of its Affiliates has (a) permitted or agreed to any extension in the time for payment of receivables relating to its business other than in the ordinary course of business and consistent with past practice or (b) changed its policies or practices with respect to the extension of credit to customers of Buyer other than in the ordinary course of business and consistent with past practice.
- 8.11 **Actions and Proceedings.** There are no outstanding orders, judgments, injunctions, awards or decrees of any Governmental Authority against Buyer or any of its Subsidiaries other than those that would not have a Buyer Material Adverse Effect. Except as disclosed in the SEC Documents filed prior to the date hereof, there are no actions, suits or legal, administrative, regulatory or arbitration proceedings pending or, to the knowledge of Buyer, threatened against Buyer or any of its Subsidiaries that, if adversely determined, would result, individually or in the aggregate, in a Buyer Material Adverse Effect. Neither Buyer nor any of its Subsidiaries nor any property or asset of Buyer or any of its Subsidiaries is subject to (other than as apply to the poultry industry in general) or in violation of any order, executive order, writ, stay, decree, judgment, determination, award or injunction that could reasonably be expected to have a Buyer Material Adverse Effect.
- 8.12 **Compliance with Laws.** Except for such matters that would not have a Buyer Material Adverse Effect, (i) Buyer holds, owns or possesses, and is in compliance with the terms of, all permits,

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licenses, exemptions, orders and approvals of all Governmental Authorities (other than Environmental Permits, which are exclusively provided for in Section 8.16) necessary for the conduct of its businesses and to own, lease and operate its properties (the Buyer Permits ), (ii) with respect to the Buyer Permits, no action or proceeding is pending or, to the knowledge of Buyer, threatened by any Governmental Authority, (iii) Buyer's business is being conducted in compliance with all applicable Laws, and (iv) no investigation or review by any Governmental Authority with respect to Buyer is pending or, to the knowledge of Buyer, threatened, in each case, other than disclosed on the Buyer Disclosure Schedule.

8.13 **Material Contracts.** The Buyer Disclosure Schedule sets forth, as of the date hereof, a listing of all of the following written (or, to the knowledge of Buyer, oral) agreements to which Buyer or any of its Subsidiaries is a party to or bound by: (a) employment agreement with an individual requiring payments of compensation in excess of \$50,000 per year; (b) consulting agreement with an individual requiring payments of compensation in excess of \$50,000 per year; (c) material distributor agreement which is not terminable on ninety (90) days (or less) notice; (d) joint venture, partnership or similar contract or agreement or equity or debt investment agreements; (e) contracts which are terminable by the other party or parties thereto upon a change of control of Buyer, other than such contracts the termination of which would not, individually or in the aggregate, have a Buyer Material Adverse Effect; (f) contracts or agreements that limit or purport to limit the ability of Buyer or any of its Subsidiaries to compete in any line of business or in any geographic area; (g) collective bargaining or labor agreements; (h) leases of real property pursuant to which Buyer or any of its Subsidiaries is entitled to receive (x) consideration in excess of \$100,000 in any calendar year after December 31, 2002, or (y) consideration in excess of \$200,000 in the aggregate over the remaining term of such lease; (i) agreements, notes, bonds, indentures or other instruments governing indebtedness for borrowed money, and any guarantee thereof or the pledge of any assets or other security therefor; (j) material requirements, take or pay or similar agreements; (k) material powers of attorney or agency agreements; (l) material feed ingredient contracts or commodity future contracts, option contracts or similar agreements, including without limitation, all such agreements that extend beyond sixty (60) days from the date hereof; (m) material agreements or arrangements establishing, creating or relating to any rebate, promotion, advertising coupon or other allowance; (n) material toll processing, co-packing or similar agreement; or (o) other contract, agreement or arrangement, involving an estimated total future payment or payments in excess of \$1,000,000 (other than one time purchase orders with respect to raw materials and one time sales contracts relating to the sale of inventory, each in the ordinary course of business). The contracts required to be so listed are referred to herein as the Buyer Material Contracts. With respect to all Buyer Material Contracts, (i) all such contracts are the valid and binding obligations of Buyer in full force and effect, (ii) neither Buyer nor any of its Subsidiaries nor, to Buyer's knowledge, any other party to any such Buyer Material Contract is in breach thereof, or default thereunder, and (iii) there does not exist under any provision thereof, or any event that, with the giving of notice or the lapse of time or both, would constitute such a breach or default except for such breaches, defaults and events which in the case of clauses (i), (ii) and (iii) would not, individually or in the aggregate, have a Buyer Material Adverse Effect. Buyer has made available to Seller true and correct copies of all Buyer Material Contracts.

8.14 **Labor Relations.**

8.14.1 Except as set forth in the Buyer Disclosure Schedule, neither Buyer nor any of its Subsidiaries is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by Buyer or any of its Subsidiaries.

8.14.2 Except for such matters as would not have a Buyer Material Adverse Effect, there are no (i) labor strikes, disputes, slowdowns, representation or certification campaigns or work stoppages pending, or to Buyer's knowledge, threatened against or affecting Buyer or any of its Subsidiaries, (ii) grievance or arbitration proceedings, letter agreements or settlement agreements arising out of collective bargaining agreements to which Buyer or any of its Subsidiaries is a party, or (iii) unfair labor practice (within the meaning of the National Labor Relations Act or applicable state statute) complaints pending or, to Buyer's knowledge, threatened against Buyer or any of its Subsidiaries.



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- 8.14.3 Except for such matters as would not have a Buyer Material Adverse Effect, Buyer and its Subsidiaries are in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours.
- 8.14.4 Except for such matters as would not have a Buyer Material Adverse Effect, there are, with respect to Buyer and its Subsidiaries, no lawsuits or pending administrative matters before any federal, state or local courts or agencies regarding violations or alleged violations of any federal, state or local wage and hour law or any federal, state or local law with respect to discrimination or harassment on the basis of sex, age, race, color, creed, national origin, disability, religion or any other protected characteristics under such federal, state or local law or involving allegations by any employee concerning alleged discrimination or harassment based on whistleblower claims involving allegations of fraud, corporate misconduct, financial mismanagement, environmental compliance or similar claims asserted under federal, state or local laws.
- 8.14.5 To Buyer's knowledge, as of the date hereof, there is no activity involving any employees seeking to certify a collective bargaining unit. To Buyer's knowledge, as of the date hereof, except as described in the Buyer Disclosure Schedule, no executive, key employee, or group of employees has any plans to terminate employment with Buyer or its Subsidiaries.
- 8.15 **Employee Plans.** Except as reflected in the Buyer Disclosure Schedule or as would not have, individually or in the aggregate, a Buyer Material Adverse Effect:
- 8.15.1 The Buyer Disclosure Schedule sets forth the Employee Plans maintained by Buyer or any Subsidiary of Buyer.
- 8.15.2 Buyer, each Employee Plan, and the administrator and fiduciaries of each Employee Plan have complied in all material respects with all applicable legal requirements governing each Employee Plan, including, but not limited to, the Code, ERISA, HIPAA and the changes made under the Sarbanes-Oxley Act of 2002. No lawsuits or complaints to, or by, any Person are pending with respect to any Employee Plan.
- 8.15.3 No Employee Plan is currently under audit, examination or investigation by any government agency, including but not limited to the IRS, the SEC or the DOL.
- 8.15.4 To the best of Buyer's knowledge, neither Buyer, its Affiliates, an Employee Plan, nor an administrator or fiduciary of any Employee Plan has taken any action, or failed to take any action, that could subject it or him or her or any other Person to any liability for any excise tax, fine or other penalty under applicable laws or for breach of fiduciary duty under ERISA or the Code with respect to or in connection with any Employee Plan.
- 8.15.5 Neither Buyer, its Affiliates, an Employee Plan, an administrator or fiduciary of any Employee Plan, nor any other Person has any liability to any Employee Plan participant, beneficiary or other Person under any provision of ERISA, the Code or any other applicable law by reason of any payment of benefits or other amounts or failure to pay benefits or any other amounts, or by reason of any credit or failure to give credit for any benefits or rights (such as, but not limited to, vesting rights) with respect to benefits under or in connection with an Employee Plan. Neither Buyer nor its Affiliates is in arrears with respect to any contributions under or premiums payable for any Employee Plan.
- 8.15.6 Each funded Employee Plan that is a Pension Plan is qualified under Section 401(a) of the Code, and the trust or trusts maintained in connection with such Employee Plan is or are exempt from tax under Section 501(a) of the Code. A favorable IRS determination letter as to the qualification under the Code has been received for each such Pension Plan.



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A favorable IRS determination letter as to the qualification under the Code has been received for each such Pension Plan and its related trust or trusts and has been or will be timely amended for the recent tax changes commonly referred to as GUST , since the date of such determination letter there are not circumstances that are likely to adversely affect the qualification of such Pension Plans, and each such Pension Plan has been or will be timely amended to comply with the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001.

- 8.15.7 Buyer is not a participating employer in any Multiemployer Plan (as defined in Section 3(37) of ERISA).
- 8.15.8 No liability under Subtitle C or D of Title IV of ERISA has been or is expected to be incurred by Buyer of its Affiliates either directly or indirectly with respect to any ongoing, frozen or terminated single employer plan , within the meaning of Section 4001(a)(14) of ERISA.
- 8.15.9 All accrued obligations of Buyer or its Affiliates for payments by it to trust or other funds or to any governmental or administrative agency, with respect to pension benefits, unemployment compensation benefits, social security benefits or any other benefits for employees of Buyer and its Affiliates have been paid or adequate accruals therefore have been made in Buyer s financial statements, and none of the foregoing has been rendered not due by reason of any extension, whether at the request of any of Buyer, its Affiliates or otherwise.
- 8.15.10 Buyer and its Affiliates are in material compliance with the requirements of Sections 162(k) (to the extent applicable prior to its amendment by the Technical and Miscellaneous Revenue Act of 1988) and 4980B of the Code and Section 601 of ERISA and no event or condition exists with respect to any welfare plan that could subject Buyer or its Affiliates to any tax under the foregoing sections of the Code and ERISA.
- 8.15.11 Neither Buyer nor its Affiliates has any obligation to provide post-retirement medical or other benefits, except as may be required by Section 4980B of the Code or Part 6 of Title I of ERISA or applicable state medical benefits continuation law, and Buyer and its Affiliates may terminate any such post-retirement medical or other benefits upon thirty (30) days notice or less without any liability therefore.
- 8.16 **Environmental.** Except as reflected in any environmental site assessments made available to Seller, as are immaterial, or as reflected in the Buyer Disclosure Schedule:

- (a) Buyer and its Subsidiaries possess all Environmental Permits necessary under applicable Environmental Laws to conduct their business and operations as currently conducted.
- (b) Buyer and its Subsidiaries are, and at all times have been, in compliance with and have not been and are not in violation of or liable under any applicable Environmental Laws and Environmental Permits, and none of Buyer and its Subsidiaries has received any written communication from any Person that alleges that Buyer and its Subsidiaries is not in such compliance.
- (c) There are no Environmental Claims pending or, to Buyer s knowledge, threatened, against any of Buyer and its Subsidiaries in either case arising out of (i) any real property currently or formerly owned, leased or operated by any of Buyer and its Subsidiaries, (ii) any current or former operations of any of Buyer and its Subsidiaries, or (iii) any other properties and assets (whether real, personal or mixed) in which any of Buyer and its Subsidiaries has or had an interest.

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- (d) None of Buyer and its Subsidiaries has retained, or assumed, either contractually or by operation of law, any liabilities of which Buyer has knowledge arising under applicable Environmental Laws or Environmental Permits.
- (e) This Section 8.16 contains the exclusive representations and warranties of Buyer with regard to Environmental Claims, Environmental Laws, Environmental Permits and any other environmental matters in this Agreement.

8.17 **Absence of Liens.** Except for assets disposed of in the ordinary course of business, Buyer and each of its Subsidiaries has valid title to or a valid leasehold in, or a contractual or common law right to use, each item of tangible personal property used in the conduct of Buyer's business free and clear of any Encumbrances, other than Permitted Encumbrances and Encumbrances described in Section 8.17 of the Buyer Disclosure Schedule.

8.18 **Real Estate.**

- (a) The Buyer Disclosure Schedule sets forth a list and description of all material real property owned in fee by Buyer or any of its Subsidiaries (the Buyer Owned Real Property ). With respect to each such parcel of Buyer Owned Real Property:
  - (i) Buyer or any of its Subsidiaries has good and marketable title to the parcel of Buyer Owned Real Property, free and clear of any Encumbrance, except for Permitted Encumbrances and Encumbrances described in Section 8.18(a)(i) of the Buyer Disclosure Schedule;
  - (ii) there are no pending or, to Buyer's knowledge, threatened condemnation, expropriation, eminent domain or other similar proceedings, lawsuits or administrative actions relating to the Buyer Owned Real Property which materially and adversely affect the current use or occupancy thereof;
  - (iii) there are no outstanding written or, to Buyer's knowledge, oral rights, agreements, options or rights of first refusal to purchase the parcel of Buyer Owned Real Property, or any portion thereof or interest therein, which have been granted to any other Person;
  - (iv) to Buyer's knowledge, except as described in Section 8.18(a)(iv) of the Buyer Disclosure Schedule, there are no parties (other than Buyer or any of its Subsidiaries) in possession of or holding any rights to take possession of the parcel of Buyer Owned Real Property; and
  - (v) except for any matter which would not materially adversely affect the current use of a parcel of Buyer Owned Real Property, to Buyer's knowledge, (a) the legal description for the parcel contained in the deed thereof describes such parcel fully and adequately, (b) the buildings and improvements are located within the boundary lines of the described parcels of land, are not in violation of applicable setback requirements, zoning laws, and ordinances (and none of the properties or buildings or improvements thereon are subject to permitted non-conforming use or permitted non-conforming structure classifications), and do not encroach on any easement which may burden the land, (c) the land does not serve any adjoining property for any purpose inconsistent with the use of the land, and (d) the property is not located within any flood plain or subject to any similar type restriction for which any permits or licenses necessary to the use thereof have not been obtained.
- (b) The Buyer Disclosure Schedule sets forth a list and description of all material real property leased or subleased to Buyer or any of its Subsidiaries. Buyer has made available to Seller correct and complete copies of the leases and subleases listed in the



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Buyer Disclosure Schedule. With respect to each such lease and sublease, except as disclosed in the Buyer Disclosure Schedule:

- (i) to Buyer's knowledge, such lease or sublease is legal, valid, binding, enforceable, and in full force and effect;
- (ii) to Buyer's knowledge, such lease or sublease will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;
- (iii) neither Buyer, its Subsidiaries, nor, to Buyer's knowledge, any other party to the lease or sublease is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a material breach or default or permit termination, modification, or acceleration thereunder;
- (iv) to Buyer's knowledge, no party to the lease or sublease has repudiated any provision thereof;
- (v) there are no material disputes, oral agreements, or forbearance programs in effect as to the lease or sublease;
- (vi) to Buyer's knowledge, with respect to each sublease, the representations and warranties set forth in subsections (i) through (v) above are true and correct with respect to the underlying lease; and
- (vii) neither Buyer nor any of its Subsidiaries has assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold.

8.19 **Proxy Statement.** The proxy statement to be distributed in connection with Buyer's meeting of stockholders to vote upon the issuance of the Shares pursuant to this Agreement (the Proxy Statement ) will comply as to form in all material respects with the applicable requirements of the Exchange Act, and the rules and regulations promulgated thereunder. Notwithstanding the foregoing, Buyer makes no representation with respect to any statement in the foregoing documents based upon information about Seller or the Acquired Companies supplied by Seller for inclusion therein.

8.20 **Brokers and Finders.** Except for Credit Suisse First Boston LLC and Houlihan Lokey Howard & Zukin Financial Advisors, Inc., Buyer has not employed any investment banker, broker or finder or incurred any liability for any brokerage fees, commissions or finders fees in connection with the transactions contemplated by this Agreement.

8.21 **Financing.** Buyer has obtained all financing, bank consents and bank authorizations necessary to consummate the transactions contemplated hereunder as long as the Purchase Price does not exceed \$600,000,000.

8.22 **Inventory.** Except for such matters that would not have a Buyer Material Adverse Effect, to Buyer's knowledge, the inventory of Buyer consists of live, raw materials and supplies, manufactured and purchased parts, goods in process, and finished goods, all of which is merchantable and fit for the purpose for which it was procured or manufactured, and none of which is slow-moving, obsolete, damaged, or defective, subject only to applicable reserves. Since March 29, 2003, the inventory of Buyer has been maintained in all material respects at levels in the ordinary course of business. The inventory of Buyer existing on March 29, 2003 was recorded on the balance sheet of such date included in the Buyer SEC Documents at the lower of its cost or its market value consistent with poultry industry practices.



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- 8.23 **Customers.** The Buyer Disclosure Schedule sets forth a list of as of the end of the Buyer's three (3) fiscal years ended September 30, 2000, September 29, 2001, and September 28, 2002, the top 25 customers determined by chicken product sales during such year (the Buyer Major Customers ). Buyer has previously provided to Seller a schedule of each of the Buyer's long-term pricing commitments for the Buyer Major Customers for the fiscal year ending in September 2003 in effect as of the date of this Agreement, and no material reduction in any such commitment has occurred between March 29, 2003 and the date of this Agreement. Except as indicated in the Buyer Disclosure Schedule, none of Buyer's top 25 customers, determined by outstanding receivables as of March 29, 2003, has terminated or materially altered its relationship with the Buyer between March 29, 2003 and the date of this Agreement, or, to Buyer's knowledge, threatened to do so or otherwise notified Buyer of its intention to do so, and there has been no material dispute with any of such customers between March 29, 2003 and the date of this Agreement.
- 8.24 **Intellectual Property.** Buyer owns, or possesses adequate licenses or other rights to use, all material Intellectual Property Rights currently used or necessary to conduct its business. Without limitation to the foregoing, Buyer owns the trademarks and related Intellectual Property Rights described in Section 8.24 of the Buyer Disclosure Schedule and those trademarks are the only material trademarks used in the business of Buyer. To the knowledge of Buyer, and other than such infringements that would not have a Buyer Material Adverse Effect, (i) the Intellectual Property Rights of the Buyer currently used to conduct its business do not infringe upon any Intellectual Property Rights of others, and (ii) no third party is infringing on the Intellectual Property Rights of Buyer currently used to conduct its business.
- 8.25 **OSHA Matters.** There are no pending citations against Buyer under any OSHA Laws other than those that would not have a Buyer Material Adverse Effect. To Buyer's knowledge, neither Buyer nor any of its Subsidiaries is in violation of any OSHA Laws that could reasonably be expected to have a Buyer Material Adverse Effect. This Section 8.25 contains the exclusive representations and warranties of Buyer with regard to OSHA Laws, and any violation thereof or other matter related thereto, in this Agreement.
- 8.26 **Taxes and Tax Returns.**
- (a) With respect to the Buyer and its Subsidiaries; (i) all material Tax Returns required to be filed by them have been filed, (ii) all Taxes shown to be due on such returns have been paid or accrued, (iii) all Taxes for which a notice of assessment or collection has been received (other than amounts being contested in good faith by appropriate proceedings), have been paid or accrued. No Governmental Authority has asserted any material claim for Taxes, or to the Buyer's knowledge, has threatened to assert any material claim for Taxes.
  - (b) The statute of limitations has closed for all Tax Returns of the Buyer and its Subsidiaries.
  - (c) All material Taxes required by law to be withheld or collected with respect to the Buyer and its Subsidiaries have been withheld or collected and paid to the appropriate Governmental Authorities (or are properly being held for such payment).
  - (d) There are no liens for Taxes upon the material assets of the Buyer and its Subsidiaries (other than Liens for Taxes that are not yet due and payable).
  - (e) None of the assets of the Buyer and its Subsidiaries are considered tax-exempt use property or tax-exempt bond financed property within the meaning of sections 168(g)(1)(B) or (C) of the Code.
  - (f) To Buyer's knowledge, none of the Buyer or its Subsidiaries has a material taxable presence in any jurisdiction where they do not file a Tax Return.





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- (g) The Buyer and its Subsidiaries have not made or become obligated to make, and will not as a result of the transactions contemplated hereby become obligated to make, any payments that could be nondeductible by reason of Section 280G (without regard to subsection (b)(4) thereof) or 162(m) of the Code, nor will any of the Buyer or its Subsidiaries be required to gross up or otherwise compensate any individual because of the imposition of any excise tax on such a payment to the individual.
- (h) To Buyer's knowledge, no facts or circumstances have occurred or failed to occur which would cause the inclusion of the suspense account (that Buyer established pursuant to Code Section 447(i)(1)) into the gross income of the Buyer or any member of its affiliated group other than ratably as provided by Code Section 447(i)(5), consistent with Buyer's past practice. In addition, the transactions contemplated in this Agreement will not cause the Buyer or its affiliated group to include the balance of such suspense account into gross income for Tax purposes.

**9. Covenants.**

**9.1 Covenants of Seller.**

9.1.1 **Conduct of Business.** During the period from the date hereof to the Closing Date, unless Buyer shall otherwise agree in writing or as contemplated by this Agreement or as necessary or appropriate to satisfy its obligations hereunder, Seller covenants that Seller and its Affiliates, including, without limitation, the Acquired Companies, shall (i) conduct and operate the Business in all material respects in the usual and ordinary course consistent with past practice, (ii) use reasonable commercial efforts to preserve intact the Business and its relationships with growers, suppliers, labor unions, customers and others having business dealings with them that are material to the Business, and (iii) use reasonable commercial efforts to keep available the services of the Business' present officers and key employees. Without limiting the generality of the foregoing, unless Buyer shall otherwise agree in writing (which agreement will not be unreasonably withheld) or as contemplated by this Agreement or as necessary or appropriate to satisfy its obligations hereunder, during the period from the date hereof to the Closing Date, Seller covenants that:

- (a) none of the Acquired Companies shall adopt or propose any change in its Charter Documents;
- (b) none of Seller or its Affiliates shall authorize for issuance, issue, deliver, sell, pledge, dispose of, encumber or grant any lien on, or authorize or propose the issuance, delivery, sale, pledge, disposition of, encumber or grant of any lien on, any shares of the capital stock of any Acquired Company, or other voting securities or any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any such securities or voting securities or any other ownership interest in any of the Acquired Companies (or interest the value of which is derived by reference to any of the foregoing), or enter into any agreement with respect to any of the foregoing;
- (c) none of the Acquired Companies shall acquire or agree to acquire any business or any corporation, partnership, association or other business, operation, organization or division thereof;
- (d) subject to Section 9.4 hereof, none of Seller and its Affiliates shall sell, abandon or otherwise dispose of, or pledge, mortgage or otherwise encumber any material assets of the Business other than in the ordinary course of business;
- (e) subject to Section 9.4 hereof, none of Seller and its Affiliates shall other than in the ordinary course of business, waive, release, grant or transfer any rights of material value relating to the Business;



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- (f) none of Seller and its Affiliates shall modify or amend, or waive any benefit of, any noncompetition agreement benefiting the Business;
- (g) none of Seller and its Affiliates shall make any change in any method of financial accounting or financial accounting practice relating to the Business, except as required by applicable Law or to comply with GAAP;
- (h) except as required by its terms or in the ordinary course of business, none of Seller and its Affiliates shall amend in any material respect, terminate, renew (except as contemplated by Section 9.1.1(p)) or renegotiate any Company Material Contract or default in any material respect (or take or omit to take any action that with or without the giving of notice or passage of time or both, would constitute a default in any material respect) under any Company Material Contract or, except as contemplated by Section 9.1.1(p), enter into any new contract which would have been deemed to be a Company Material Contract if it had been in effect on the date hereof;
- (i) none of the Acquired Companies shall declare, issue or make any direct or indirect redemption, purchase or other acquisition of any shares of its capital stock or property, declare, issue or make any distribution or dividend to its stockholders in cash or in kind (except as otherwise contemplated by this Agreement) or split, combine, dividend, distribute or reclassify any shares of its capital stock;
- (j) none of Seller and its Affiliates shall dispose of or permit to lapse any rights to the use of any material Intellectual Property Rights benefiting the Business, or disclose any such material Intellectual Property Rights not a matter of public knowledge, except for any such disclosure required by applicable Law or judicial process and disclosures made in the ordinary course of business;
- (k) none of Seller and its Affiliates shall effect any increase in, amendment to or establishment of any bonus, insurance, severance, deferred compensation, pension, retirement, profit sharing, stock option, stock purchase or other employee benefit plan or collective bargaining agreement relating to employees of the Business;
- (l) except in the ordinary course of business, and except as required by contracts in effect on the date hereof, none of Seller and its Affiliates shall effect any increase in compensation, bonus, severance or termination pay or other benefits payable to the employees of the Business;
- (m) none of the Acquired Companies shall make any loan, advance or capital contribution to or investment in any Person in an aggregate amount in excess of \$100,000 (excluding any loan, advance or capital contribution to, or investment in, any Acquired Company);
- (n) none of the Acquired Companies shall incur or assume any indebtedness for borrowed funds (including obligations in respect of capital leases), assume, guarantee, endorse, or otherwise become liable or responsible (whether directly, contingently, or otherwise) for the obligations of any other Person;
- (o) none of Seller and its Affiliates shall change in any material respect its existing practices and procedures with respect to the extension of credit or collection of accounts receivable relating to the Business;

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- (p) none of Seller and its Affiliates will enter into, with respect to the Business, any fixed price agreement having a term greater than one (1) year and involving greater than \$2,500,000 during the term of the contract;
- (q) other than the routine replacement and repair of equipment and facilities in the ordinary course of business and capital expenditure commitments existing as of the date hereof, none of Seller and its Affiliates will make any individual capital expenditure on behalf of the Business in an amount in excess of \$250,000;
- (r) none of Seller and its Affiliates will make material changes in the production capabilities or capacities of the Business production facilities; and
- (s) agree or commit to do any of the actions prohibited by paragraphs (a) through (r) of this Section 9.1.1.

9.1.2 **Access to Information.** During the period from the date hereof until the Closing Date, Seller will, and will cause its Affiliates and their employees, officers, auditors and agents to, provide Buyer and Buyer's counsel, financial advisors, accountants and other authorized representatives (except to the extent not permitted under applicable Law or to the extent resulting in the waiver of attorney-client privilege, as advised by counsel) with reasonable access during normal business hours to the Business books and records and properties, plants and personnel.

9.1.3 **Interim Financial Information.** During the period from the date hereof until the Closing Date, Seller shall promptly provide Buyer with copies of: (i) all monthly financial management reports, Agristat reports and weekly consolidated summary profit and loss statements relating to the Business; (ii) any notice, report or other document filed with or sent to any Governmental Authority in connection with the transactions contemplated by this Agreement; and (iii) any material notice, report or other document received by any of the Acquired Companies from any Governmental Authority.

9.1.4 **Notice of Developments.** During the period from the date hereof until the Closing Date, Seller shall promptly notify Buyer in writing of: (i) the discovery by Seller of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes a material inaccuracy in any representation or warranty made by Seller in this Agreement or in the Seller Disclosure Schedule; (ii) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute a material inaccuracy in any representation or warranty made by Seller in this Agreement or in the Seller Disclosure Schedule if (A) such representation or warranty or delivery of information had been made as of the time of the occurrence, existence or discovery of such event, condition, fact or circumstance, or (B) such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement; (iii) any material breach of any covenant or obligation of Seller; and (iv) any event, condition, fact or circumstance that would make the timely satisfaction of any of the conditions set forth in Section 10 impossible or unlikely or that has had or could reasonably be expected to have a Company Material Adverse Effect. Without limiting the generality of the foregoing, Seller shall promptly advise Buyer in writing of any Action threatened, commenced or asserted against or with respect to any of the Acquired Companies, except where such Action would not be reasonably likely to have a Company Material Adverse Effect. No notification given to Buyer pursuant to this Section 9.1.4 shall limit or otherwise affect any of the representations, warranties, covenants or obligations of Seller contained in this Agreement.

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9.2 **Covenants of Buyer.**

9.2.1 **Conduct of Business.** During the period from the date hereof to the Closing Date, unless Seller shall otherwise agree in writing or as contemplated by this Agreement or as necessary or appropriate to satisfy its obligations hereunder, Buyer covenants and agrees that it shall (i) conduct and operate its business and operations in all material respects in the usual and ordinary course consistent with past practice, (ii) use its reasonable commercial efforts to preserve intact its business organization and preserve its relationships with growers, suppliers, labor unions, customers and others having business dealings with it that are material to Buyer and (iii) use its reasonable commercial efforts to keep available the services of its present officers and key employees. Without limiting the generality of the foregoing, unless Seller shall otherwise agree in writing (which agreement shall not be unreasonably withheld) or as contemplated by this Agreement or as necessary or appropriate to satisfy its obligations hereunder, during the period from the date hereof to the Closing Date, Buyer covenants that it shall not:

- (a) adopt or propose any change to its Charter Documents, except for the amendment to Buyer's certificate of incorporation described on Exhibit 9.2.1;
- (b) authorize for issuance, issue, deliver, sell, pledge, dispose of, encumber or grant any lien on, or authorize or propose the issuance, delivery, sale, pledge, disposition of, encumber or grant of any lien on, any shares of its capital stock, or other voting securities or any securities convertible into or exercisable for, or any rights, warrants or options to acquire, any such securities or voting securities or any other ownership interest (or interest the value of which is derived by reference to any of the foregoing), or enter into any agreement with respect to any of the foregoing;
- (c) acquire or agree to acquire any material business or any material corporation, partnership, association or other business, operation, organization or division thereof; or
- (d) declare, issue or make any direct or indirect redemption, purchase or other acquisition of any shares of its capital stock, declare, issue or make any distribution or dividend to its stockholders in cash or in kind (except as otherwise contemplated by this Agreement and normal cash dividends consistent with past practices) or split, combine, dividend, distribute or reclassify any shares of its capital stock.

9.2.2 **Access to Information.** During the period from the date hereof until the Closing Date, Buyer will, and will cause its Affiliates and their employees, officers, auditors and agents to, provide Seller and Seller's counsel, financial advisors, accountants and other authorized representatives (except to the extent not permitted under Law or to the extent resulting in the waiver of attorney-client privilege, as advised by counsel), with reasonable access during normal business hours to Buyer's and its Subsidiaries' books and records and properties, plant and personnel.

9.2.3 **Contracts.** Buyer acknowledges that various contracts relating to the Business were originally entered into in the name of Seller or an Affiliate of Seller (other than the Acquired Companies). Such contracts have been or, subject to Section 9.12, will be assigned to CPC at or prior to Closing. Buyer shall indemnify and hold Seller and its Affiliates harmless from and against all Liability arising under such contracts, except to the extent Buyer is entitled to indemnification with respect to such Liability pursuant to Section 12.1 hereof. Buyer and Buyer's Affiliates shall use commercially reasonable efforts to obtain the release of Seller and its Affiliates (other than the Acquired Companies) from all Liabilities arising under such contracts. Buyer shall, and shall cause the Acquired Companies to, not renew or otherwise extend, or permit the renewal or extension of, the existing term of any such contracts to the extent Buyer has or gains knowledge of such contracts, other than any such contract with



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respect to which Seller and its Affiliates (other than the Acquired Companies) would have no potential Liability.

- 9.2.4 **Guarantees.** Buyer and Seller shall use their commercially reasonable efforts to cause Buyer to be substituted in all respects for Seller and its Affiliates (other than the Acquired Companies), and Seller and its Affiliates (other than the Acquired Companies) fully released, effective as of the Closing or as soon as possible thereafter, in respect of all obligations of Seller and its Affiliates (other than the Acquired Companies) under each of the guarantees, indemnities, bonding arrangements, letters of credit and letters of comfort given by Seller or its Affiliates (other than the Acquired Companies) for the benefit of the Business (the Guarantees ), including, without limitation, those which are identified on Exhibit 9.2.4 hereto. If any such release cannot be obtained, (i) Buyer shall indemnify and hold Seller and Seller's Affiliates (other than the Acquired Companies) harmless from and against any Liability relating to any Guarantee not released except to the extent Buyer is entitled to indemnification with respect to such Liability pursuant to Section 12.1 hereof, and (ii) Buyer shall, and shall cause the Acquired Companies to, not renew or otherwise extend the original term of any contract, agreement, lease, or other document or instrument to which such unreleased Guarantee relates to the extent Buyer has or gains knowledge of such unreleased Guarantee.
- 9.2.5 **Interim Financial Information.** During the period from the date hereof until the Closing Date, Buyer shall promptly provide Seller with copies of: (i) all monthly financial management reports, Agristat reports and weekly consolidated summary profit and loss statements relating to Buyer; (ii) any notice, report or other document filed with or sent to any Governmental Authority in connection with the transactions contemplated by this Agreement; and (iii) any material notice, report or other document received by Buyer from any Governmental Authority.
- 9.2.6 **Notice of Developments.** During the period from the date hereof until the Closing Date, Buyer shall promptly notify Seller in writing of: (i) the discovery by Buyer of any event, condition, fact or circumstance that occurred or existed on or prior to the date of this Agreement and that caused or constitutes a material inaccuracy in any representation or warranty made by Buyer in this Agreement or in the Buyer Disclosure Schedule; (ii) any event, condition, fact or circumstance that occurs, arises or exists after the date of this Agreement and that would cause or constitute a material inaccuracy in any representation or warranty made by Buyer in this Agreement or in the Buyer Disclosure Schedule if (A) such representation or warranty or delivery of information had been made as of the time of the occurrence, existence or discovery of such event, condition, fact or circumstance, or (B) such event, condition, fact or circumstance had occurred, arisen or existed on or prior to the date of this Agreement; (iii) any material breach of any covenant or obligation of Buyer; and (iv) any event, condition, fact or circumstance that would make the timely satisfaction of any of the conditions set forth in Section 10 impossible or unlikely or that has had or could reasonably be expected to have a Buyer Material Adverse Effect. Without limiting the generality of the foregoing, Buyer shall promptly advise Seller in writing of any Action threatened, commenced or asserted against or with respect to Buyer, except where such Action would not be reasonably likely to have a Buyer Material Adverse Effect. No notification given to Seller pursuant to this Section 9.2.6 shall limit or otherwise affect any of the representations, warranties, covenants or obligations of Buyer contained in this Agreement.
- 9.2.7 **Share Listing.** Buyer shall obtain approval for listing, subject to notice of issuance, on the New York Stock Exchange, all Shares to be issued to Seller pursuant to this Agreement.
- 9.3 **No Solicitation.** From the date hereof through the date two (2) years after the earlier of the Closing Date and the termination of this Agreement pursuant to Section 11, neither Buyer or any of its Subsidiaries or Affiliates, on the one hand, nor Seller or any of its Subsidiaries or Affiliates, on the



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other, will, directly or indirectly, except as contemplated by this Agreement, solicit for employment or employ any management level employee of the other party; provided, however, nothing herein shall restrict the above referenced parties from (i) soliciting any such employee by general employment advertising or third party employment agencies (so long as such agencies are not directed by such parties to target such employees), or (ii) hiring any employee who responds to such permitted solicitation or seeks employment on an unsolicited basis. The parties hereto agree that the terms of this Section 9.3 shall specifically supercede Section 7 of the Confidentiality Agreement and Section 7 of the Confidentiality Agreement is hereby terminated.

9.4 **Excluded Assets.**

9.4.1 **Retained Intellectual Property.** Seller specifically and exclusively retains all right, title and interest in and to the name ConAgra, Butterball, Country Skillet, Banquet, Fresh Trace, Oven Bake and Game Time (and derivations thereof) and any logos, trademarks, service marks, trade names, domain names, copyrights and trade dress related thereto (the Retained Intellectual Property ). Buyer acknowledges that, except as provided in the Transition Trademark License Agreement, it will not acquire, and that the Acquired Companies do not own, any right, title or interest in or to the Retained Intellectual Property. Buyer agrees that as promptly as practicable after Closing, except as required by any agreement to which an Acquired Company was bound immediately prior to Closing, it will cause the Acquired Companies to discontinue the use of any advertising or other form of media that uses or references any such Retained Intellectual Property, except as permitted by the Transition Trademark License Agreement. Buyer further agrees that as soon as practicable, but in no event longer than one (1) year after the Closing Date, it shall remove all signage which refers to any Retained Intellectual Property, and take all such other action as may be necessary to dissociate Seller with the operations of the Business after Closing, except as permitted by the Transition Trademark License Agreement.

9.4.2 **Corporate Services; Insurance.** Buyer acknowledges that the Acquired Companies are covered by certain insurance policies and insurable risk programs made available through Seller and described on Exhibit 9.4.2. With respect to any loss, Liability or damage relating to, resulting from or arising out of the conduct of the Business on or prior to the Closing Date for which Seller would be entitled to assert, or cause any Affiliate or other Person to assert, a claim for recovery under any policy of insurance maintained by or for the benefit of Seller or any Affiliate thereof in respect of the Business, at the request of the Acquired Companies, (x) Seller shall use its reasonable efforts to assert, or to assist the Acquired Companies to assert, one or more claims under such insurance covering such loss, Liability or damage if none of the Acquired Companies are entitled to assert such claim, but Seller or an Affiliate thereof is so entitled, in all events subject to applicable deductibles and retentions, (y) Seller shall provide the Acquired Companies with any recoveries under such insurance, in all events subject to applicable deductibles and retentions, and (z) Seller shall provide the Acquired Companies with access to any applicable insurance policies. Buyer further acknowledges that the systems and services listed on Exhibit 9.4.2 hereto (the Corporate Services ) are supplied by Seller or its Affiliates to the Business, and (ii) Buyer will not acquire, and the Acquired Companies do not own, any right, title or interest in or to the Corporate Services.

9.4.3 **Retained Assets.** The Retained Assets shall be distributed by the Acquired Companies to Seller or its designees at or before Closing.

9.5 **Record Retention.** Except as set forth below and also subject to Section 13 hereof, Buyer will cause all books and records relating to the Business as of the Closing (the Records ) to be retained for seven (7) years after Closing. In addition, except as set forth below and also subject to Section 13 hereof, to the extent any books and records relating to the Business are retained by Seller following Closing (the Retained Records ), Seller shall retain the Retained Records for seven (7) years after Closing. During such term, each party shall allow the other party and its representatives access to inspect or copy the Records and Retained Records, as appropriate, during normal business hours. In

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the event a party intends to destroy any Records or Retained Records in its control at the end of such seven (7) year term, such party shall first notify the other party at which time the other party shall have the right to remove the Records at its own cost. The parties acknowledge that, in the past, they have routinely disposed of certain books and records on a periodic basis and have not retained such books and records for seven (7) years. Notwithstanding the foregoing, each party may continue such routine periodic record destruction so long as prior to such destruction, the party intending to destroy the records notifies the other party of the nature of such destruction and permits the other party to remove and retain such records at its expense.

**9.6 Governmental Approvals.**

9.6.1 Subject to the terms and conditions herein provided and applicable legal requirements, each of the parties hereto agrees to use its commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, as promptly as practicable, all things necessary, proper or advisable under applicable Laws to ensure that the conditions set forth in Section 10 are satisfied and to consummate and make effective the transactions contemplated by this Agreement.

9.6.2 Each of the parties shall use its commercially reasonable efforts to obtain as promptly as practicable all consents, waivers, approvals, authorizations or permits of, or registration or filing with or notification to, any Governmental Authority or any other Person required in connection with, and waivers of any violations, defaults or breaches that may be caused by, such party's consummation of the transactions contemplated by this Agreement.

9.6.3 Each party hereto shall promptly inform the other of any communication from the FTC, the DOJ, the SEC or any other Governmental Authority regarding any of the transactions contemplated by this Agreement. If any party hereto or any Affiliate thereof receives a request for additional information or documentary material from any such Governmental Authority with respect to the transactions contemplated by this Agreement, then such party shall use commercially reasonable efforts to cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request.

9.6.4 Without limiting the generality of the foregoing, each of the parties will use commercially reasonable efforts to obtain all authorizations or waivers required under the HSR Act to consummate the transactions contemplated hereby, including, without limitation, making all filings required of it with the Antitrust Division of the DOJ and the FTC required in connection therewith (the initial filings to occur no later than three (3) business days following the execution and delivery of this Agreement) and responding as promptly as practicable to all inquiries received from the DOJ, the FTC or any Governmental Authority for additional information or documentation. Buyer shall pay all of its filing and its legal fees associated with the filings referenced in this Section 9.6.4, and Seller shall pay all of its filing and its legal fees associated with the filings referenced in this Section 9.6.4. Each of Buyer and Seller shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission which is necessary under the HSR Act.

**9.7 Investigation and Agreement by the Parties; No Other Representations or Warranties.**

(a) Buyer, on the one hand, and Seller, on the other hand, each acknowledge and agree that it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning, the other party and its Subsidiaries and their business and operations, and such party has requested such documents and information from the other party as such party considers material in determining whether to enter into this Agreement and to consummate the transactions contemplated in this Agreement. Buyer,

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on the one hand, and Seller, on the other hand, each acknowledges and agrees that it has had an opportunity to ask all questions of and receive answers from the other party with respect to any matter such party considers material in determining whether to enter into this Agreement and to consummate the transactions contemplated in this Agreement. In connection with each party's investigation of the other party and its Subsidiaries and their business and operations, each party and its representatives have received from the other party or its representatives certain projections and other forecasts for the other party and its Subsidiaries and certain estimates, plans and budget information. Each party acknowledges and agrees that there are uncertainties inherent in attempting to make such projections, forecasts, estimates, plans and budgets; that such party is familiar with such uncertainties; that such party is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections, forecasts, plans and budgets so furnished to it or its representatives; and that such party will not (and will cause all of its respective Subsidiaries or other Affiliates or any other Persons acting on its behalf to not) assert any claim or cause of action against the other party or any of the other party's directors, officers, employees, agents, stockholders, Affiliates, consultants, counsel, accountants, investment bankers or representatives with respect thereto, or hold any such other Person liable with respect thereto.

- (b) Each of Buyer, on the one hand, and Seller, on the other hand, agree that, except for the representations and warranties made by the other party that are expressly set forth in this Agreement, the other party has not made and shall not be deemed to have made to such party or to any of its representatives or Affiliates any representation or warranty of any kind. Without limiting the generality of the foregoing, each party agrees that neither the other party nor any of its representatives or Affiliates makes or has made any representation or warranty to such party or to any of its representatives or Affiliates with respect to:
  - (i) any projections, forecasts, estimates, plans or budgets of future revenues, expenses or expenditures, future results of operations (or any component thereof), future cash flows (or any component thereof) or future financial condition (or any component thereof) of the other party or any of its Subsidiaries or the future business, operations or affairs of the other party or any of its Subsidiaries heretofore or hereafter delivered to or made available to such party or its counsel, accountants, advisors, lenders, representatives or Affiliates; and
  - (ii) any other information, statement or documents heretofore or hereafter delivered to or made available to such party or its counsel, accountants, advisors, lenders, representatives or Affiliates with respect to the other party or any of its Subsidiaries, except to the extent and as expressly covered by a representation and warranty made by the other party and contained in this Agreement.

9.8 **Litigation.**

- 9.8.1 **Company Litigation.** Buyer acknowledges that various Actions are now pending or may arise after the date hereof which result from operations of the Business or Acquired Companies and which name, or may in the future name, Seller (and/or one or more of Seller's Affiliates), either individually, together with one or more Acquired Companies, or otherwise, as a party thereto, including, without limitation, the Actions which are described in the Seller Disclosure Schedule (the Company Litigation); provided, however, that for purposes of this Agreement, the term Company Litigation shall not include the Retained Litigation. Except as to matters subject to Seller's indemnification obligations under Section 12.1, Buyer shall indemnify and hold Seller and Seller's Affiliates harmless from and against all Liability relating to the Company Litigation including, without limitation, all costs and expenses of defending the Company Litigation. Buyer may settle or compromise any such Company Litigation (i) with the

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written consent of Seller, which consent shall not be unreasonably withheld or delayed, or (ii) without such consent, so long as such settlement or compromise includes (A) an unconditional release of Seller and/or its Affiliates, as the case may be, from all Liability in respect of such Company Litigation, (B) does not subject Seller or its Affiliates to any injunctive relief or other equitable remedy, and (C) does not include a statement or omission of fault, culpability or failure to act by or on behalf of Seller or its Affiliates. Seller and its Affiliates shall have the right, but not the obligation, to participate at their own expense in the defense of any Company Litigation and any such participation shall not in any way diminish or lessen the obligations of Buyer hereunder. Seller shall reasonably cooperate with Buyer, at Buyer's cost and expense, in connection with the defense of any Company Litigation and, in connection therewith, shall furnish on a timely basis all such information, records, documents and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by Buyer, and provide, on a timely basis, access to and availability of its employees for purposes of such litigation, including, without limitation, for purposes of assisting in trial preparation and the conduct of any trial.

9.8.2 **Retained Litigation.** Notwithstanding anything contained in this Agreement to the contrary, the parties hereto agree that Seller, at its cost and expense, shall retain, and shall have the sole right to control, all claims and causes of action which have been asserted or may be asserted in the future by or on behalf of the Acquired Companies in the following captioned lawsuits and/or any other lawsuits which may be filed in the future with respect to the subject matter of such captioned lawsuits (hereinafter collectively referred to as the **Retained Litigation**):

- (a) **In re Linerboard Antitrust Litigation, MDL Docket No. 1261 (E.D. Pa.),**
- (b) **In re Vitamins Antitrust Litigation (MDL No. 1285) Misc. 99-0197 (D.D.C.),** and
- (c) **Giral v. F-Hoffman LaRoche, Civil Action No. 98 CA 7467 (D.C. Sup. Ct.);**

including any appeals thereof.

Seller shall be entitled to receive and retain the benefits of any judgment awarded or settlement reached in connection with the Retained Litigation. Buyer shall, and shall cause the Acquired Companies to, reasonably cooperate with Seller, at Seller's cost and expense, in respect to the Retained Litigation and, in connection therewith shall furnish, on a timely basis, all information, records, documents and testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by Seller and provide, on a timely basis, access to, and availability of, Company Employees for purposes of such litigation, including, without limitation, for purposes of assisting in trial preparation and the conduct of any trial. Seller may settle or compromise the Retained Litigation (i) with the written consent of Buyer, which consent shall not be unreasonably withheld or delayed, or (ii) without such consent, so long as such settlement or compromise includes (a) an unconditional release of the Acquired Companies from all Liability in respect of such Retained Litigation to the extent any of the Acquired Companies are named as a defendant in such Retained Litigation or it would be reasonable to expect that any of the Acquired Companies will be named as defendants in connection with such Retained Litigation, (b) does not subject Buyer or its Affiliates (including the Acquired Companies) to any injunctive relief or any equitable remedy and (c) does not include a statement or admission of fault, culpability, or failure to act by or in behalf of Buyer or its Affiliates (including the Acquired Companies).

9.9 **Proxy Statement.** As promptly as practicable, Buyer shall prepare and, after receipt from Seller of the audited financial statements referred to in Section 9.15, file with the SEC the Proxy Statement in preliminary form. Buyer shall use commercially reasonable efforts to have the Proxy

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Statement cleared by the SEC as soon as practicable. Seller shall cooperate with Buyer in the preparation of the Proxy Statement, including providing Buyer with such information relating to Seller and its Affiliates and the Business as may be required to comply with the rules of the SEC. If, at any time prior to the Effective Time, any event or circumstance relating to Buyer or Seller, any Subsidiary of Buyer or Seller, or their respective officers or directors, should be discovered by a party which should be set forth in an amendment or a supplement to the Proxy Statement, such party shall promptly inform the other party and the parties shall cooperate in taking appropriate action in respect thereof.

9.10 **Proxy Statement: Stockholder Approval.**

- (a) Buyer, acting through its Board of Directors, shall, subject to and in accordance with applicable Law, its Certificate of Incorporation and its By-Laws, promptly and duly call, give notice of, convene and hold as soon as practicable following the date the Proxy Statement has been cleared by the SEC, a meeting of the holders of Buyer Common Stock for the purpose of voting to approve the issuance of the Shares pursuant to this Agreement and the rules of the New York Stock Exchange (the Buyer Stockholder Meeting ), and recommend to the stockholders of Buyer the issuance of the Shares and include in the Proxy Statement such recommendation.
- (b) Buyer, as promptly as practicable, shall cause the definitive Proxy Statement to be mailed to its stockholders as soon as practicable following the date on which it is cleared by the SEC.

9.11 **Batesville Property.** Seller shall, following the date hereof, take all necessary action to split or otherwise subdivide the real estate relating to Seller's and CPC's Batesville, Arkansas facilities (the Shared Property ) along the lines as set forth on Exhibit 9.11 hereof. Parcel X as identified on Exhibit 9.11 is and shall be a Retained Asset and shall, as of and after the Closing Date, continue to be owned by Seller. Parcels Y and Z as identified on Exhibit 9.11 are and shall be included with the Business and, prior to the Closing Date, shall be conveyed by Seller to CPC. Buyer and Seller shall use their mutual best efforts to identify and resolve on or prior to the Closing Date, or as soon as possible thereafter, all issues relating to the Shared Property to provide for the independent use and enjoyment of Parcel X by Seller and Parcels Y and Z by CPC, such that such properties can be independently operated after Closing on substantially the same basis as such properties were operated prior to such split or subdivision, including, without limitation, executing and delivering cross-use and/or cross-easement agreements relating to access, use, parking and the like, and obtaining separate utility services for each parcel.

9.12 **Unassignable Contracts.** If (i) any third-party's (including any Governmental Authority's) consent or approval to the assignment or other transfer to the applicable Acquired Company of a contract to be transferred pursuant to a provision of this Agreement has not been obtained prior to the Closing, then as to the burdens, obligations, rights or benefits under or pursuant to such contracts (collectively, the Rights ) not assignable to the applicable Acquired Company because such consent or approval has not been obtained:

- (a) Seller shall, and shall cause its Subsidiaries to, hold the Rights in trust for the applicable Acquired Company, for the account and benefit of the applicable Acquired Company;
- (b) After the Closing, (i) Seller shall, and shall cause its Affiliates other than the applicable Acquired Company, to take such reasonable actions and do all such things as shall be reasonably necessary or desirable in order that the value of the Rights shall be preserved and shall inure to the benefit of the applicable Acquired Company and such that all benefits under the Rights may be received by the applicable Acquired Company, and (ii) Buyer shall cause the applicable Acquired Company to perform the burdens and obligations under such Rights; and

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(c) After the Closing, Seller and Buyer shall continue to use their respective reasonable efforts to obtain such consent or approval.

- 9.13 **Non-Competition and Non-Interference.** From Closing through a period of five (5) years after the Closing Date, neither Seller nor any of its Subsidiaries will, within North America or Central America (including Puerto Rico and the Caribbean region), without the prior written consent of Buyer, (A) directly or indirectly engage in (i) the growing or slaughtering of chickens, (ii) an integrated chicken operation that grows, slaughters and processes chickens, (iii) the sale of fresh chicken, or (iv) the sale of fresh frozen chicken (whole or parts) that has not been further processed (collectively, the Restricted Activities ) (other than through their ownership of Shares or other ownership interests in Buyer and other than as a holder of less than 2% of the outstanding capital stock of a publicly traded corporation), or (B) (i) use, license or otherwise allow any third party to use (to the extent Seller has rights to limit such use) the name Butterball, or use or license any third party to use the name Country Skillet, or in either case any derivation thereof, as a trademark, service mark, trade name or domain name in connection with any Restricted Activity, or (ii) use, license or convey any rights to a third party to any trade dress or copyright associated with products marketed under such name or mark in connection with any Restricted Activity. If Seller fails to keep or perform every covenant of this Section 9.13, Buyer shall be entitled to specifically enforce the same by injunction in equity in addition to any other remedies which Buyer may have. If any portion of this Section 9.13 shall be invalid or unenforceable, such invalidity or unenforceability shall in no way be deemed or construed to affect in any way the enforceability of any other provision of this Section 9.13. If any court in which Buyer seeks to have the provisions of this Section 9.13 enforced determines that the activities, time or geographic area hereinabove specified are too broad, such court may determine a reasonable activity, time or geographic area and shall enforce this Section 9.13 for such activity, time and geographic area.
- 9.14 **Transfers of Business Assets.** Seller shall cause its assets and Liabilities to be transferred and assigned so that the representations and warranties contained in Sections 7.19 and 7.25 are true and correct in all material respects as of the Closing.
- 9.15 **Audit.** Seller shall cause combined, consolidated financial statements meeting the requirements of Regulation S-X and otherwise in a form that meets the requirement of Schedule 14A under the Exchange Act for, with respect to the balance sheets required thereby, the two (2) consecutive fiscal years ending May 25, 2003 and, with respect to the related statements of earnings and cash flows required thereby, the three (3) consecutive fiscal years ending May 25, 2003, to be prepared for the Business and audited by Deloitte as promptly as practicable. Buyer shall be able to review such draft combined, consolidated financial statement for the Business, and the related workpapers, prior to issuance to ensure that they are appropriate for inclusion in its proxy statement to be filed with the SEC. At the request of Buyer, Seller shall use its commercially reasonable efforts to cause Deloitte to consent to the inclusion of their related audit report in Buyer's future SEC filings.
- 9.16 **Covenant Not to Disclose.** Seller agrees that as the owner of the Business, it and its Affiliates may possess certain data and knowledge of operations of the Business which may be proprietary in nature and confidential, including certain trade secrets (herein, Business Confidential Information ). Seller covenants and agrees that neither it nor any of its Affiliates will, at any time after the Closing, reveal, divulge or make known to any Person (other than Buyer) or use for its own account or for the account of any Person, any Business Confidential Information. Seller further covenants and agrees that neither it nor any of its Affiliates shall divulge any such Business Confidential Information which it may acquire during any transition period in which it assists or consults with Buyer or its Affiliates to facilitate the transfer and the continued success of the Business. Notwithstanding the foregoing, it is understood that the foregoing provisions shall apply only to Business Confidential Information which relates exclusively to the Business and not to information which is otherwise used in connection with Seller's other operations. In addition, notwithstanding the foregoing, it shall not be a violation of the covenant set forth in this Section 9.16 for Seller to disclose information if required to do so by court order or if any information

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disclosed by Seller is in the public domain other than as a result of conduct by Seller or its Affiliates which constitutes the breach of a confidentiality obligation to Buyer.

- 9.17 **Standstill.** During the period from the date hereof until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 11, Seller agrees not to, and will not permit any of its Affiliates to, directly or indirectly (a) trade in the Buyer's securities in violation of applicable securities laws, (b) offer, pledge, sell, contract to sell, grant or otherwise transfer or dispose of any of the Buyer Capital Stock or any securities convertible into or exercisable or exchangeable for Buyer Capital Stock or (c) enter into any swap, short position or other arrangement that transfers all or a portion of the economic consequences associated with the ownership of any Buyer Capital Stock (regardless of whether any of the transactions described in clause (b) or (c) is to be settled by the delivery of Buyer Capital Stock, or such other securities, in cash or otherwise).
- 9.18 **Expired Intellectual Property Rights.** Section 9.18 of the Seller Disclosure Schedule contains a list of expired, lapsed and/or abandoned trademarks and patents (Expired Intellectual Property Rights) in which Seller or the Acquired Companies may or may not hold some residual rights. Notwithstanding anything in this Agreement to the contrary, Buyer agrees that, effective as of the Effective Time, the Expired Intellectual Property Rights shall be deemed conveyed to Buyer on an as is basis without any representations and warranties whatsoever except that, to the knowledge of Seller, none of Seller or its Affiliates have sold, licensed or otherwise assigned any such Expired Intellectual Property Rights. Without limiting the generality of the foregoing, Buyer agrees that the representations and warranties set forth in Section 7.11 shall not apply to the Expired Intellectual Property Rights and that Seller hereby disclaims all other warranties and representations relating to the Expired Intellectual Property Rights, including but not limited to, warranties of title, validity, enforceability, revival rights and non-infringement.
- 9.19 **Cuban Intellectual Property Rights.** Notwithstanding anything in this Agreement to the contrary, no right, title or interest in or to any Intellectual Property Rights in Cuba shall be assigned, transferred or licensed from Seller to Buyer unless and until the parties have complied with all applicable laws and regulations, including the receipt of any necessary approval, consent or license from the Office of Foreign Assets Control of the United States Department of the Treasury.
- 9.20 **Liabilities and Investments.** Except as disclosed on Exhibit 9.20, Seller shall cause the Acquired Companies not to be obligated under any Indebtedness or hold any Restricted Investments (as those terms are defined in the subordinated indenture related to the Subordinated Promissory Note) immediately prior to the Closing.
- 9.21 **Rights as Holder of Shares.** As long as Seller holds any Shares issued pursuant to this Agreement, the rights and privileges of Buyer's Class A common stock and Class B common stock (including dividend rights) will be identical, except as otherwise set forth in subparts (1) through (6) under the heading "Common Stock" of Article Fourth of Buyer's Certificate of Incorporation in effect as of the Closing Date.
10. **Conditions Precedent to Obligations.**
- 10.1 **Conditions to Each Party's Obligations.** The respective obligations of each party to consummate the transactions contemplated herein shall be subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:
- (a) **Governmental Approvals.** All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Authority, which the failure to obtain, make or occur would have the effect of making any of the transactions contemplated hereby illegal, shall have been obtained, shall have been made or shall have occurred.

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- (b) **HSR Act.** The waiting period (and any extension thereof) under the HSR Act and any other applicable antitrust Laws shall have expired or been terminated.
  - (c) **No Injunction.** No Governmental Authority having jurisdiction over Seller or Buyer, or any of their respective Subsidiaries, shall have enacted, issued, promulgated, enforced or entered any Law, decree, injunction or other order (whether temporary, preliminary or permanent) which is then in effect and has the effect of making the transactions contemplated herein illegal or otherwise prohibiting consummation of the transactions contemplated herein.
  - (d) **Stockholder Approval.** The issuance of the Shares pursuant to this Agreement shall have been adopted by the requisite vote of the stockholders of Buyer in accordance with the rules of the New York Stock Exchange.
- 10.2 **Conditions to Obligation of Buyer.** The obligation of Buyer to consummate the transactions contemplated herein shall be subject to the satisfaction on or prior to the Closing Date of the following additional conditions, unless waived in writing by Buyer:
- (a) **Representations and Warranties.** Each of the representations and warranties of Seller set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date, except for such inaccuracies (without giving effect to any limitations as to materiality or a Company Material Adverse Effect set forth in such representations and warranties) that, individually or in the aggregate, would not have a Company Material Adverse Effect. Buyer shall have received an officers' certificate signed on behalf of Seller by the Chief Executive Officer and Chief Financial Officer (or any other two executive officers) of Seller to such effect.
  - (b) **Performance of Obligations of Seller.** Seller shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date, and Buyer shall have received an officers' certificate signed on behalf of Seller by the Chairman and Chief Financial Officer (or any other two executive officers) of Seller to such effect.
  - (c) **Deliveries.** The deliveries by Seller referred to in Section 4 shall have been made.
  - (d) **Audited Financial Statements.** Seller shall have delivered to Buyer the audited combined, consolidated financial statements referred to in Section 9.15. Subject to the matters described in A.19 of Section 7.8 of the Seller Disclosure Schedule, the results of operations and financial condition reflected in such combined, consolidated financial statements shall not be materially different from the results of operations and financial condition reflected in the Financial Statements for the corresponding periods.
  - (e) **Company Closing Material Adverse Effect.** No Company Closing Material Adverse Effect shall have been incurred or suffered and Buyer shall have received an officers' certificate signed on behalf of Seller by the Chief Executive Officer and the Chief Financial Officer (or any other two executive officers) of Seller to such effect.
- 10.3 **Conditions to Obligation of Seller.** The obligation of Seller to consummate the transactions contemplated herein shall be subject to the satisfaction on or prior to the Closing Date of the following additional conditions, unless waived in writing by Seller:
- (a) **Representations and Warranties.** The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all respects as of the date of this Agreement and (except to the extent such representations and warranties speak as of an earlier date) as of the Closing Date as though made on and as of the Closing Date, except for such





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inaccuracies (without giving effect to any limitations as to materiality or a Buyer Material Adverse Effect set forth in such representations and warranties) that, individually or in the aggregate, would not have a Buyer Material Adverse Effect. Seller shall have received an officers' certificate signed on behalf of Buyer by the Chairman and Chief Financial Officer (or any other two executive officers) of Buyer to such effect.

- (b) **Performance of Obligations of Buyer.** Buyer shall have performed in all material respects all obligations required to be performed by it under this Agreement on or prior to the Closing Date, and Seller shall have received an officers' certificate signed on behalf of Buyer by the Chairman and Chief Financial Officer (or any other two executive officers) of Buyer to such effect.
- (c) **Deliveries.** The deliveries by Buyer referred to in Section 4 shall have been made.
- (d) **Listing of Shares.** The Shares to be issued to Seller pursuant to this Agreement shall have been approved for listing, subject to notice of issuance, on the New York Stock Exchange.
- (e) **Buyer Closing Material Adverse Effect.** No Buyer Closing Material Adverse Effect shall have been incurred or suffered and Seller shall have received an officers' certificate signed on behalf of Buyer by the Chief Executive Officer and the Chief Financial Officer (or any other two executive officers) of Buyer to such effect.

11. **Termination.**

11.1 **Termination.** This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to the Closing Date:

- (a) by mutual written agreement of Seller and Buyer;
- (b) by either Seller or Buyer, if Closing shall not have occurred on or before December 31, 2003, as such date may be extended by the 30-day cure period provided for in Sections 11.1(d) and (e) (the Termination Date); provided that the party seeking to terminate this Agreement pursuant to this Section 11.1(b) shall not have breached in any material respect its obligations under this Agreement in any manner that shall have proximately caused the failure to consummate the transactions contemplated herein on or before the Termination Date;
- (c) by either Seller or Buyer, if: (i) any permanent injunction, order, decree or ruling by any Governmental Authority of competent jurisdiction preventing the consummation of the transactions contemplated herein shall have become final and nonappealable, or (ii) the HSR Act waiting period has failed to terminate prior to the Termination Date, or any approval or consent of the FTC, DOJ or any Governmental Authority required in order to consummate the transactions contemplated under this Agreement has not been obtained by such date;
- (d) by Buyer, if there has been a breach of one or more representations or warranties of Seller set forth in this Agreement or one or more material breaches of the covenants or agreements of Seller set forth in this Agreement, which breach is not curable or, if curable, is not cured within thirty (30) days after written notice of such breach is given by Buyer to Seller; provided, however, that this termination right under this Section 11.1(d) shall not be available with respect to breaches of representation and warranties unless the individual or aggregate impact of all inaccuracies of such representations and warranties (without regard to any materiality or Company Material Adverse Effect qualifier(s) contained in such representations and warranties) would have a Company Material Adverse Effect;

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- (e) by Seller, if there has been a breach of one or more representations or warranties of Buyer set forth in this Agreement or one or more material breaches of the covenants or agreements of Buyer set forth in this Agreement, which breach is not curable or, if curable, is not cured within thirty (30) days after written notice of such breach is given by Seller to Buyer; provided, however, that this termination right under this Section 11.1(e) shall not be available with respect to breaches of representations and warranties unless the individual or aggregate impact of all inaccuracies of such representations and warranties (without regard to any materiality or Buyer Material Adverse Effect qualifier(s) contained in such representations and warranties) would have a Buyer Material Adverse Effect;
  - (f) by either Buyer or Seller if (i) the Stockholders Meeting (including any adjournments and postponements thereof) shall have been held and completed and Buyer's stockholders shall have voted on a proposal to approve the issuance of shares pursuant to this Agreement, and (ii) the issuance of shares pursuant to this Agreement shall not have been approved at such meeting (and shall not have been approved at any adjournment or postponement thereof) by the required stockholder vote; provided, however, that (A) a party shall not be permitted to terminate this Agreement pursuant to this Section 11.1(f) if the failure to obtain such stockholder approval is attributable to a failure on the part of such party to perform any material obligation required to be performed by such party at or prior to the Closing, and (B) Buyer shall not be permitted to terminate this Agreement pursuant to this Section 11.1(f) unless Buyer shall have made the payment required to be made to Seller pursuant to Section 11.3;
  - (g) by Buyer if the Average Price is less than \$5.35 and the conditions precedent to Closing contained in Section 10.1 have been satisfied or waived and Seller shall not have taken the actions described in Section 3.3.4 to prevent such termination;
  - (h) by Buyer if, since the date of this Agreement, there shall have occurred any Company Closing Material Adverse Effect, or any event or circumstance that, in combination with any other events or circumstances, could reasonably be expected to have a Company Closing Material Adverse Effect, which effect, or the underlying event or circumstance, is not curable or, if curable, is not cured within thirty (30) days after written notice thereof is given by Buyer to Seller;
  - (i) by Seller if, since the date of this Agreement, there shall have occurred any Buyer Closing Material Adverse Effect, or any event or circumstance that, in combination with any other events or circumstances, could reasonably be expected to have a Buyer Closing Material Adverse Effect, which effect, or the underlying event or circumstance, is not curable, or, if curable, is not cured within thirty (30) days after written notice thereof is given by Seller to Buyer; and
  - (j) by Seller if the Estimated Purchase Price exceeds \$600,000,000 and Buyer shall not have taken the actions described in Section 3.3.5 to prevent such termination.
- 11.2 **Effect of Termination.** In the event of termination of this Agreement pursuant to this Section 11, the transactions contemplated hereby shall be deemed abandoned and this Agreement shall forthwith become void, except that the provisions of this Section 11.2, Section 9.3, Section 11.3, Section 14.3 and the terms of the Confidentiality Agreement shall survive any termination of this Agreement; provided, however, that nothing in this Agreement shall relieve any party from liability for any breach of this Agreement.
- 11.3 **Termination Payment.** If Seller terminates the transactions contemplated hereunder for any reason, other than pursuant to Sections 11.1(a), (b), (c), (e), (f), (i) or (j), then Seller shall immediately pay Buyer \$25,000,000. If Buyer terminates the transactions contemplated under this Agreement for any reason other than pursuant to Sections 11.1(a), (b), (c), (d) or (h) then Buyer shall immediately pay Seller \$25,000,000. Such payments shall be in addition to any other

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remedies or damages available to the non-breaching party resulting from or arising in connection with the other party's breach of this Agreement.

**12. General Indemnity.**

12.1 **Indemnification of Buyer by Seller.** In addition to the other indemnification obligations of Seller set forth in this Agreement (the Seller Indemnities ), from and after the Closing, Seller shall indemnify and hold Buyer, and the directors, officers, employees and Affiliates of Buyer, harmless against and in respect of:

12.1.1 Any liability, loss, claim, damage or deficiency resulting from any breach of representation or warranty (without regard to any materiality or Company Material Adverse Effect qualifier(s) contained in any such representations and warranties) or nonfulfillment of any covenant or agreement on the part of Seller under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to Buyer hereunder (provided that, for purposes of this Section 12.1.1 and Section 12.5.1, all such representations and warranties shall be deemed to be made as of the Closing Date as though made on and as of the Closing Date and all references to as of the date hereof or similar phrase in such representations and warranties shall be deemed to be references to as of the Closing Date notwithstanding any provision of this Agreement that any such representation or warranty speaks as of an earlier date);

12.1.2 Any liability, loss, claim, damage or deficiency resulting from the ownership or the operation of the Retained Business or relating to Retained Assets;

12.1.3 Any Liabilities of the Acquired Companies existing at or arising out of a state of facts or circumstances existing or business conducted before the Effective Time, to the extent such Liabilities are not (i) accrued or reserved in the Final Closing Balance Sheet, (ii) disclosed in Section 7.12, Section 7.16.2, Section 7.16.3 or Section 7.26 of the Seller Disclosure Schedule, (iii) disclosed in Exhibit 12.1.3 hereto or (iv) obligations under any contract or agreement either (x) to furnish goods, services and other non-cash benefits to another Person after the Closing or (y) to pay for goods, services and other non-cash benefits that another Person will furnish to it after the Closing;

12.1.4 Any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement; and

12.1.5 All other actions, suits, proceedings, demands, assessments, adjustments, costs and expenses incident to the foregoing or the Seller Indemnities and including, without limitation, reasonable attorneys' fees and other out-of-pocket expenses.

12.2 **Indemnification of Seller by Buyer.** In addition to the other indemnification obligations of Buyer set forth in this Agreement (the Buyer Indemnities ), from and after the Closing, Buyer shall indemnify and hold Seller, and the directors, officers, employees and Affiliates of Seller, harmless against and in respect of:

12.2.1 Any liability, loss, claim, damage or deficiency resulting from any breach of representation or warranty (without regard to any materiality or Buyer Material Adverse Effect qualifier(s) contained in such representations and warranties) or nonfulfillment of any covenant or agreement on the part of Buyer under this Agreement, or from any misrepresentation in or omission from any certificate or other instrument furnished or to be furnished to Seller hereunder;

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- 12.2.2 Any liability, loss, claim, damage or deficiency incurred or suffered by Seller or its Affiliates that relate to the failure of Buyer or the Acquired Companies to pay, perform or discharge

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any of the Liabilities of the Acquired Companies, except as to matters subject to Seller's indemnification obligations under Section 12.1 or under any of Seller's other indemnity obligation under this Agreement or the Ancillary Agreements;

12.2.3 All other actions, suits, proceedings, demands, assessments, adjustments, costs and expenses incident to the foregoing or the Buyer Indemnities and including, without limitation, reasonable attorneys' fees and other out-of-pocket expenses.

12.3 **Third Party Claims.** All claims for indemnification relating to third party claims shall be asserted and resolved as set forth in this section 12.3 subject, however, to the terms, conditions and limitations otherwise set forth in this Agreement. In the event that any written claim or demand for which an Indemnifying Party would be liable is asserted against or sought to be collected from any Indemnified Party by a third party, such Indemnified Party shall promptly, but in no event more than 30 days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party in writing of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the Claim Notice). The Indemnified Party shall not be foreclosed by any failure to provide timely notice of the existence of a third party claim or demand to the Indemnifying Party except to the extent that the Indemnifying Party incurs any out-of-pocket expense as a result of such delay or otherwise has been prejudiced as a result of such delay. The Indemnifying Party shall have fifteen days from the receipt of the Claim Notice (the Notice Period) to notify the Indemnified Party (a) whether or not the Indemnifying Party disputes the liability of the Indemnifying Party to the Indemnified Party hereunder with respect to such claim or demand, and (b) whether or not it desires to defend the Indemnified Party against such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand and except as hereinafter provided, the Indemnifying Party shall have the right to select legal counsel, reasonably acceptable to the Indemnified Party, to represent and defend the Indemnified Party and to otherwise control the proceedings relating to such claim or demand. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its counsel in defending any claims or demands, including, without limitation, making available to the Indemnifying Party all information reasonably available to the Indemnified Party relating to such claim or demand, and shall not take any action which is reasonably likely to be detrimental to such defense. In addition, the Indemnified Party and the Indemnifying Party shall render to each other such assistance as may reasonably be requested in order to ensure the proper and adequate defense of any such claim or demand. The party in charge of the defense shall keep the other party fully apprised at all times as to the status of the defense or any settlement negotiations with respect thereto. If any Indemnified Party desires to participate in, but not control, any such defense or settlement it may do so at its sole cost and expense provided, the Indemnifying Party shall pay the attorneys' fees of the Indemnified Party if (i) the employment of separate counsel shall have been authorized in writing by any such Indemnifying Party in connection with the defense of such third party claim, (ii) the Indemnifying Party shall not have employed counsel reasonably satisfactory to the Indemnified Party to have charge of such third party claim, or (iii) the Indemnified Party's counsel shall have advised the Indemnified Party in writing with a copy to the Indemnifying Party that there is conflict of interest that could make it inappropriate under applicable standards of professional conduct to have common counsel. In the event that the Indemnifying Party does not elect to defend the claim, the Indemnified Party shall not settle a claim or demand without the consent of the Indemnifying Party (which consent shall not unreasonably be withheld). The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, consent to the entry of a judgment, settle, compromise or offer to settle or compromise any such claim or demand or admit or acknowledge any liability (i) on a basis which would result in the imposition of a consent order, injunction, decree or equitable remedy which would restrict the future activity or conduct of the Indemnified Party or any Subsidiary or Affiliate thereof without the written consent of the Indemnified Party and (ii) without obtaining (a) a release of the Indemnified Party with respect to such claim or demand and (b) the dismissal with prejudice of any litigation or other proceeding with respect to such claim or demand, in each case for the benefit of and in form and substance reasonably satisfactory to the Indemnified Party. If the Indemnifying Party

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elects not to defend the Indemnified Party against a claim or demand for which the Indemnifying Party would be liable, whether by not giving the Indemnified Party timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is to be contested by the Indemnified Party, then that portion thereof as to which such defense is unsuccessful (and the reasonable costs and expenses pertaining to such defense) shall be the liability of the Indemnifying Party hereunder. To the extent the Indemnifying Party shall control or participate in the defense or settlement of any third party claim or demand, the Indemnified Party will give to the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party. The Indemnified Party shall use commercially reasonable efforts in the defense of all such claims and demands.

- 12.4 **Direct Claims.** In any case in which an Indemnified Party seeks indemnification hereunder which is not subject to Section 12.3 because no third party action is involved, the Indemnified Party shall promptly notify the Indemnifying Party in writing of any liability, loss, claim, damage or deficiency which such Indemnified Party claims are subject to indemnification under the terms of this Agreement. Subject to the terms, conditions and limitations set forth in this Agreement, the Indemnified Party shall not be foreclosed by any failure to provide timely notice of existence of a claim to the Indemnifying Party except to the extent that the Indemnifying Party incurs any out-of-pocket expense or otherwise has been prejudiced as a result of such delay.

**12.5 Limitations.**

- 12.5.1 **Basket.** Neither Seller nor Buyer shall have any Liability for indemnification obligations under Section 12.1.3, or resulting from a breach of a representation or warranty under Sections 7 or 8 of this Agreement (including a deemed breach of a representation or warranty as provided in the proviso in Section 12.1.1 of this Agreement), except to the extent such party's aggregate Liability for all such indemnification obligations (without regard to any materiality, Company Material Adverse Effect qualifier(s) or Buyer Material Adverse Effect qualifier(s) contained in any representations and warranties set forth in this Agreement) exceeds Thirty Million Dollars (\$30,000,000); provided, however, Seller's indemnity obligations set forth in Section 7.6 and any matter constituting fraud or intentional misrepresentation by Buyer or Seller in connection with the transactions contemplated herein shall not be subject to the foregoing limitation.
- 12.5.2 **Cap.** Each party's aggregate Liability for indemnification under this Agreement shall in no event exceed Two Hundred Million Dollars (\$200,000,000); provided however, that each party's indemnity obligations set forth in Section 13 and any matter constituting fraud, intentional misrepresentation or criminal activity under applicable Law shall not be subject to the foregoing limitation.
- 12.5.3 **Remedies.** Other than equitable remedies available at law to either party (including specific performance), after Closing the provisions of this Section 12 and Section 13 shall be the exclusive basis for the assertion of claims against, or the imposition of Liability on, Seller or its Affiliates, or Buyer or its Affiliates, in respect to the transactions contemplated herein, including, without limitation, any breach or alleged breach of this Agreement; provided that this paragraph shall not limit any remedies available for breaches of the Voting Agreement or any agreement executed at Closing pursuant to this Agreement.
- 12.5.4 **Mitigation.** Buyer and Seller shall, and shall cause their Affiliates to, use commercially reasonable efforts to mitigate the losses, costs, expenses and damages for which such party or their Affiliates may become entitled to indemnification hereunder.
- 12.5.5 **Net Recovery.** The amount to which an Indemnified Party may become entitled pursuant to the indemnification provisions of this Agreement shall be net of any recovery (whether by way of payment, discount, credit, set off, tax benefit, counterclaim or otherwise) received by such party or its Affiliates from a third party (including any insurer or taxation authority) in





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respect of such claim. Any such recovery shall be promptly repaid by Buyer to Seller, or Seller to Buyer, as applicable, less any taxes payable on the recovery and all reasonable costs, charges and expenses incurred in obtaining such recovery from the third party. For the avoidance of doubt, a Tax benefit shall only be taken into account under this paragraph to the extent that that the Tax benefit results in a lower Tax liability for the Indemnified Party than would have occurred absent the indemnity payment and the Tax benefit is actually recognized on a Tax Return.

12.5.6 **Limitation of Damages.** Each party shall be responsible only for direct damages, and shall in no event be liable for special, consequential or similar damages or losses.

12.5.7 **Satisfaction of Indemnity Claims.** Notwithstanding any of the terms and conditions of this Agreement to the contrary, except for each party's indemnity obligations under Section 13, all amounts payable by Seller to Buyer with respect to any indemnity claim brought by Buyer under this Agreement, shall be satisfied, at the Seller's option, either by Seller delivering to Buyer for cancellation that portion of the Subordinated Promissory Note that has a principal amount equal to the amount of the indemnity claim owed by Seller, or by payment of cash. Notwithstanding any of the terms and conditions of this Agreement to the contrary, all amounts payable by Buyer to Seller with respect to any indemnity claim brought by Seller under this Agreement, shall be satisfied, at Buyer's option, either by increasing the amounts due and owing under the Subordinated Promissory Note in an amount equal to the amount of the indemnity claim owed by Buyer, or by the payment of cash. All payments with respect to indemnity claims shall be made promptly.

**13. Special Tax Indemnity.**

**13.1 Tax Returns.**

13.1.1 Buyer shall cause the Acquired Companies to consent to join, for all taxable periods of the Acquired Companies ending on or before the Closing Date for which the Acquired Companies are eligible to do so, in any consolidated or combined federal, state or local Tax Returns of Seller or Seller's Affiliates. Seller will prepare and file, or cause to be prepared and filed, all of the Acquired Company Tax Returns for all taxable years or periods ending on or before the Closing Date (to the extent they have not already done so). Seller will pay to the applicable Governmental Authority, or cause the payment to the applicable Governmental Authority of, any Taxes shown as due thereon. Seller will prepare, or cause to be prepared, such Tax Returns using material accounting methods and other practices that are consistent with those used by the Acquired Companies in their prior Tax Returns except as otherwise required by Law. Notwithstanding the foregoing, Seller may revoke the election of To-Ricos under Code Section 936, in which event, Buyer will reasonably cooperate with Seller, and cause To-Ricos to consent to join in the filing of any federal, state or local consolidated or combined Tax Return with Seller and its affiliated group for the taxable year or period ending on the Closing Date. Items to be taken into account in any Tax Return for the short taxable period ending on the Closing Date will be determined under the closing-the-books method as described in Treasury Regulation Section 1.1502-76(b)(2)(i) (or any similar provision of state, local or foreign Law). Seller will deliver, or cause to be delivered, a draft of each of the Tax Returns for any of the Acquired Companies that require the signature of an officer or employee of Buyer (or one of Buyer's Affiliates) to Buyer not less than 30 days prior to the due date (as may be extended) for filing such Tax Returns, and Buyer will provide Seller with its comments on, and proposed changes to, such Tax Returns not later than 15 days prior to such due date. If any aspect of such Tax Returns remains in dispute within 10 days prior to the due date for filing such Tax Returns, the matter in dispute will be submitted to a mutually acceptable, nationally-recognized firm of certified public accountants for resolution. The decision of such accountant will be final and binding on the parties, and the fees and expenses of the accountant will be paid one-half by Buyer and one-half by Seller. Notwithstanding the foregoing, Buyer shall not be entitled to

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object to any Tax Return prepared by Seller unless the accountant concludes that a position claimed in the Tax Return does not possess the level of support required to avoid the substantial understatement penalty provided for in Section 6662(d) of the Code.

- 13.1.2 Buyer will prepare and file, or cause to be prepared and filed, all of the Acquired Companies' Tax Returns for all taxable years or periods ending after the Closing Date, and Buyer will pay, or cause to be paid, all Taxes shown as due thereon; provided, that with respect to any Straddle Period, Buyer will be entitled to indemnification as set forth in Section 13.3.
- 13.1.3 The parties agree to reasonably cooperate with each other and each other's Affiliates in the preparation and filing of Tax Returns of the Acquired Companies for taxable periods ending on or before the Closing Date and Straddle Periods. The parties shall be entitled to utilize the services of the personnel who would have been responsible for preparing such returns as they relate to the Acquired Companies, without charge, to the extent reasonably necessary in preparing said returns on a timely basis. The parties shall also provide each other with full access to applicable and reasonably relevant records to enable the timely preparation and filing of said returns.
- 13.2 **Apportionment of Taxes.** With respect to any Straddle Period of the Acquired Companies, Buyer and Seller will, to the extent permitted by law, elect to treat the Closing Date as the last day of the taxable year or period of the Acquired Companies and will apportion any Taxes arising out of or relating to a Straddle Period to the Pre-Closing Period under the closing-the-books method as described in Treasury Regulation Section 1.1502-76(b)(2)(i) (or any similar provision of state, local or foreign Law). In any case where applicable Law does not permit the Acquired Companies to treat the Closing Date as the last day of the taxable year or period, any Taxes arising out of or relating to a Straddle Period will be apportioned to the Pre-Closing Period based on a closing of the books of that entity; **provided, however,** that exemptions, allowances or deductions (excluding depreciation, amortization and depletion deductions) that are calculated on an annualized basis will be apportioned on a daily pro rata basis. Notwithstanding the foregoing, Taxes imposed with respect to a time period (*e.g.*, property taxes) shall be apportioned to the Pre-Closing Period on a daily pro rata basis.
- 13.3 **Indemnification by Seller.** Seller will indemnify and hold harmless the Buyer and the directors, officers, employees and Affiliates of Buyer (**Buyer Indemnified Persons**) for, and will pay to, or on behalf of, Buyer Indemnified Persons an amount equal to (a) any Taxes of the Acquired Companies for the Pre-Closing Period (including, for the avoidance of doubt, any Taxes of the Acquired Companies resulting from an election under Section 338(h)(10) of the Code) that have not been paid prior to the Closing Date, except to the extent accrued as a Liability on the Final Closing Balance Sheet, (b) any Taxes relating to any member of an affiliated group with which any of the Acquired Companies has filed a Tax Return on a consolidated, combined or unitary basis for a Pre-Closing Period, and (c) any Tax deficiency, and all related, reasonable legal and accounting fees and expenses, each directly resulting from any breach of Seller's representations in Section 7.10(d), (e), (f), (g), and (i) or Seller's covenants contained in this Section 13.
- 13.4 **Indemnification by Buyer.** Buyer will pay, or cause to be paid, on a timely basis, and shall indemnify, defend and hold harmless Seller and the directors, officers, employees and Affiliates of Seller (**Seller Indemnified Persons**) for: (a) any Tax deficiency, and all related, reasonable legal and accounting fees and expenses, each directly resulting from any breach of Buyer's representations in Section 8.26(d), (e), (g) and (h) or Buyer's covenants contained in this Section 13, (b) any Liability for Taxes for Tax periods of the Buyer and the Acquired Companies beginning, and the portion of the Straddle Period occurring, after the Closing Date, and (c) any Liability for Taxes attributable to an extraordinary transaction (other than the distribution of the Retained Assets or any deemed asset sale occurring under section 338(h)(10) or any comparable provision of state or local Law) effected at the direction of Buyer in respect of the Acquired Companies on or after the Effective Time.

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- 13.5 **Indemnification Process.** In the event of a third-party claim for Taxes arising out of or relating to any taxable year or period of an Acquired Company ending on or before the Closing Date, the indemnification procedures will be in accordance with Section 12.3 and the limitations contained in Sections 12.5.3 through 12.5.6 (inclusive); provided however, that with respect to any Tax matter involving a Governmental Authority that does not treat the Acquired Companies as selling their assets to a newly created corporation on the Closing Date as a result of the Section 338(h)(10) election, Seller shall not settle or compromise any third-party claim for Taxes that may adversely effect Buyer in taxable periods ending after the Closing Date without Buyer's consent (which shall not be unreasonably withheld). Any indemnification payments due under this Section 13 shall be paid within 10 days from the date of a final determination (as defined in Section 1313(a) of the Code) of the amount of Tax due.
- 13.6 **Characterization of Indemnity Payments.** All amounts paid by Buyer or Seller, as the case may be, by reason of Section 12.1, 12.2, 13.3 or 13.4 will be treated to the extent permitted under applicable Law as adjustments to the Purchase Price for all Tax purposes.
- 13.7 **Transfer Taxes.** Notwithstanding any other provision of this Agreement, all Transfer Taxes will be borne by Seller regardless of which party is obligated to pay such Tax under applicable Law. Buyer and Seller will cooperate in timely making and filing all Tax Returns that may be required to comply with Law relating to such Taxes.
- 13.8 **Tax Sharing Agreements.** Seller will cause the Acquired Companies to terminate as of the Closing Date any tax sharing, indemnity or allocation agreement between them and: (i) any other Affiliate of the Seller; (ii) Renewable Environmental Solutions, L.L.C.; or (iii) any partner of Renewable Environmental Solutions, L.L.C.
- 13.9 **Tax Records.** Seller will make available to Buyer such records as Buyer may require for the preparation of any Tax Return and such records as Buyer may require for the defense of any proceeding concerning such Tax Return. Buyer will make available to Seller such records as Seller may require for the preparation of any Tax Return and such records as Seller may require for the defense of any proceeding concerning any such Tax Return.
- 13.10 **Refunds.** Buyer and its Affiliates shall pay to Seller within ten (10) days of receipt any refund of Taxes: (i) that relate to a Pre-Closing Period of the Acquired Companies; (ii) that were paid by Seller or its Affiliates; and (iii) to the extent that any such refunds were not accrued as an asset on the Final Closing Balance Sheet.
- 13.11 **Survival.** The covenants and agreements of the parties contained in this Section 13 and the representations and warranties contained in Section 7.10(d), (e), (f), (g) and (i) and Section 8.26 (d), (e), (g) and (h) will survive the Closing and will remain in full force and effect until thirty (30) days following the expiration of the applicable underlying statutes of limitations (including extensions) with respect to any Taxes that would be indemnifiable by Buyer or Seller under Sections 13.3 and 13.4 of this Agreement.
- 13.12 **Section 338(h)(10) Election.** Seller agrees that it will, and with Buyer's and the Acquired Companies' full cooperation, prepare and make an election or join in making an election under Section 338(h)(10) of the Code in order to treat the sale of the Stock as a sale of all of the assets of the Acquired Companies for U.S. federal Tax purposes and an election under the statutes of such states as permit an equivalent election. Seller and Buyer will not make a joint election under the corresponding provisions of Puerto Rican law. Seller agrees that it will, and with Buyer's and the Acquired Companies' full cooperation, take such action to comply with all of the requirements and conditions of Section 338(h)(10) of the Code and the treasury regulations thereunder and all other applicable Code sections and treasury regulations relating thereto, including without limitation the execution and timely filing of Form 8023 entitled Elections Under Section 338 for Corporations Making Qualified Stock Purchases or any successor form of similar import, and any forms required to effectuate similar elections for state tax purposes. The parties agree that the Purchase Price shall be allocated to the assets of the Acquired Companies in accordance with Exhibit 13.12



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hereto. Each party covenants to report gain, loss, or cost basis, as the case may be, in a manner consistent with Exhibit 13.12 for federal and state Tax purposes. Buyer, the Acquired Companies and Seller shall promptly notify Seller (and Seller will promptly notify Buyer) in the event that any Governmental Authority challenges or threatens to challenge, such allocations. Buyer, the Acquired Companies, and Seller shall cooperate after the Closing Date to timely and properly file all applicable federal and state elections required to be filed under this Section and to take all such action as is required by Law to give full effect to the elections for federal, state and local Tax purposes to the greatest extent permitted by Law. Buyer, the Acquired Companies and Seller shall fully cooperate in order to qualify To-Ricos for the application of such election to To-Ricos.

- 13.13 **Miscellaneous Tax Provisions.** In no event shall any party hereto pay more than once under different provisions of this Agreement for the same Tax Liability. Notwithstanding anything to the contrary herein, if Closing occurs, this Section 13 and Sections 12.3, and 12.5.3 through 12.5.6 (inclusive) (to the extent they govern the indemnification process for Taxes) shall be the sole remedy for any Tax matters under this Agreement. For the avoidance of doubt, the provisions of Section 12.5.1 do not apply to this Section 13.
- 13.14 **Puerto Rican Tax Incentives.** The parties will fully cooperate with each other to maintain (to the extent reasonably possible under Puerto Rican Law) To-Ricos : (i) Grant of Industrial Tax Exemption pursuant to the 1987 Puerto Rican Tax Incentives Act (the Industrial Grant ); and (ii) Certificate of Exemption under the Agricultural Incentives Act (1995) (Agricultural Certificate ) after Closing until such time as To-Ricos can negotiate a modification of the Industrial Grant, obtain a new Industrial Grant under the 1998 Puerto Rican Tax Incentives Act, or ensure the continuation of its Agricultural Certificate. Provided however, Seller's obligation to cooperate with Buyer with respect to this matter shall cease no later than one calendar year following the Closing Date; provided, further Seller's obligation to so cooperate shall not (x) include any obligation to start or continue to own or conduct any entity or business in Puerto Rico or (y) preclude Seller or any Affiliate of Seller from conducting or changing any Puerto Rican business operation or activity, including Molinos de Puerto Rico, Inc.'s activities, in any manner as Seller or any Affiliate of Seller may determine.
14. **Miscellaneous.** The following miscellaneous provisions shall apply to this Agreement:
- 14.1 **Notices.** All notices or other communications required or permitted to be given, pursuant to the terms of this Agreement, shall be in writing and shall be deemed to be duly given when received if delivered in person or by telecopy, telegram or cable and confirmed by mail, or mailed by registered or certified mail (return receipt requested) or overnight courier, express mail, postage prepaid, as follows:

If to Seller: ConAgra Foods, Inc.  
One ConAgra Drive  
Omaha, Nebraska 68102  
Attn: Corporate Controller

With a Copy to: McGrath North Mullin & Kratz, PC LLO  
First National Tower  
1601 Dodge Street, Suite 3700  
Omaha, Nebraska 68102  
Fax: (402) 341-0216  
Attn: Roger W. Wells

If to Buyer: Pilgrim's Pride Corporation  
110 South Texas Street  
Pittsburg, Texas 75686  
Attn: Chief Financial Officer



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With a Copy to: Baker & McKenzie  
2300 Trammell Crow Center  
2001 Ross Avenue  
Dallas, Texas 75201  
Fax: (214) 978-3099  
Attn: Alan G. Harvey

or at such other address as the party to whom notice is to be given furnishes in writing to the other party in the manner set forth above.

- 14.2 **Amendments and Waivers.** This Agreement may not be modified or amended, except by an instrument or instruments in writing, signed by the party against whom enforcement of any such modification or amendment is sought. Either Seller or Buyer may, by an instrument in writing, waive compliance by the other party with any term or provision of this Agreement on the part of such other party to be performed or complied with. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty or agreement contained herein. The waiver by any party hereto of a breach of any term or provision of this Agreement shall not be construed as a waiver of any subsequent breach.
- 14.3 **Expenses.** Except as otherwise provided in this Agreement, Buyer and Seller shall each pay their own expenses, and those of their respective Affiliates, in connection with the preparation and execution of this Agreement and any expenses specifically payable by them pursuant to this Agreement.
- 14.4 **Survival of Representations and Warranties.** Subject to Section 13.11 hereof, the representations and warranties and indemnities related thereto of Seller and Buyer made in or pursuant to this Agreement shall survive as follows: representations and warranties, and the indemnities relating thereto, under Sections 7.16, 7.17 (except with respect to ERISA matters), 7.18, 8.14, 8.15 (except with respect to ERISA matters) and 8.16 shall survive the Closing for a period of four (4) years; representations and warranties, and the indemnities relating thereto, under Section 7.1, Section 7.3, Section 7.6, Section 7.7.2, Section 7.17 (with respect to ERISA matters) and Sections 8.1, 8.4 and 8.15 (with respect to ERISA matters) shall survive the Closing until expiration of the applicable statute of limitations; and all other representations and warranties, and the indemnities relating thereto, under this Agreement shall survive the Closing for a period of twelve (12) months. Indemnities relating to the breach of any covenant shall survive until expiration of the applicable statute of limitations. Notwithstanding the forgoing, it is specifically understood and agreed that the damages for which indemnification may be sought need not be incurred or paid by the Indemnified Party within the forgoing periods, but only that the claim with respect to which indemnification is sought be asserted and presented to the Indemnifying Party within such periods.
- 14.5 **Entire Agreement.** This Agreement, the Ancillary Agreements, the Seller Disclosure Schedule, the Buyer Disclosure Schedule and the Confidentiality Agreement constitute the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof.
- 14.6 **Terms of Sale.** The parties agree and acknowledge, on behalf of themselves and their Affiliates, that EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, OR THE ANCILLARY AGREEMENTS, THE STOCK AND THE ACQUIRED COMPANIES ARE BEING SOLD TO BUYER, AND THE SHARES ARE BEING ISSUED TO SELLER, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE ANCILLARY AGREEMENTS. EXCEPT FOR CLAIMS MADE IN ACCORDANCE WITH THE SPECIFIC TERMS OF THIS AGREEMENT OR THE ANCILLARY AGREEMENTS, NO CLAIM SHALL BE MADE AGAINST EITHER PARTY OR ITS AFFILIATES, BY THE OTHER PARTY, IN RESPECT TO ANY REPRESENTATION, WARRANTY, INDEMNITY, COVENANT OR UNDERTAKING. THE PARTIES CONFIRM THAT THEY HAVE NOT RELIED ON ANY REPRESENTATION, WARRANTY, INDEMNITY, COVENANT OR



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UNDERTAKING OF ANY PERSON WHICH IS NOT EXPRESSLY CONTAINED IN THIS AGREEMENT OR THE ANCILLARY AGREEMENTS. FOR THE AVOIDANCE OF DOUBT, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY TAX ATTRIBUTES OF THE ACQUIRED COMPANIES.

- 14.7 **Applicable Law.** This Agreement and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in Delaware (without regard to conflicts of law doctrines).
- 14.8 **Binding Effect; Benefits.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns; nothing in this Agreement, express or implied, is intended to confer on any Person other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- 14.9 **Assignability.** Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party hereto without the prior written consent of the other party hereto.
- 14.10 **Effect of Headings.** The headings of the various sections and subsections herein are inserted merely as a matter of convenience and for reference and shall not be construed as in any manner defining, limiting, or describing the scope or intent of the particular sections to which they refer, or as affecting the meaning or construction of the language in the body of such sections.
- 14.11 **Exhibits; Disclosure Schedule.** All exhibits and schedules referred to in this Agreement are incorporated herein by reference as if fully set forth herein. The disclosure of any matter in any section of the Seller Disclosure Schedule or the Buyer Disclosure Schedule shall not be deemed to constitute an admission by any party or to otherwise imply that any such matter is material or may have a Company or Buyer Material Adverse Effect, as the case may be, for purposes of this Agreement.
- 14.12 **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or other provisions of this Agreement in any other jurisdiction.
- 14.13 **Construction and Interpretation.** As used in this Agreement in respect to Seller and Buyer, knowledge, knows or known means, with respect to the matter in question, if any of the Executive Officers of Seller or Buyer, as the case may be, has actual knowledge of such matter. Executive Officers of Seller means those executive officers of Seller and the Acquired Companies listed on Exhibit 14.13 hereto, and Executive Officers of Buyer means those executive officers of Buyer listed on Exhibit 14.13 hereto. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, strictly neither for nor against any party hereto, and without implying a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the person who himself drafted same. It is hereby agreed that representatives of both parties have participated in the preparation hereof. The word or is not exclusive and the word including means including without limitation.
- 14.14 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.
- 14.15 **Consent to Jurisdiction.** The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any United States federal or Delaware state court sitting in Wilmington, Delaware with respect to any action or proceeding arising out of or relating to this Agreement and each of the parties hereto hereby irrevocably agrees that all claims in respect of such action or proceeding shall be

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heard and determined in any such court and irrevocably waives any objection it may now or hereafter have as to the venue of any such suit, action or proceeding brought in such court or

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that such court is an inconvenient forum. The parties hereto shall cause the Acquired Companies to be bound by this Section.

- 14.16 **Further Assurances.** Each of the parties hereto agrees that, from and after the Closing, upon the reasonable request of the other party hereto and without further consideration, such party will execute and deliver to such other party such documents and further assurances and will take such other actions (without cost to such party) as such other party may reasonably request in order to carry out the purpose and intention of this Agreement. Such actions shall include, without limitation, the transfer or conveyance by Buyer, the Acquired Companies or their respective Affiliates and successors of any assets or rights included in the Retained Assets, the transfer or conveyance by Seller or its Affiliates and successors of any assets or rights included in the Business, and Seller's commercially reasonable cooperation at Buyer's cost in connection with the preparation of any materials required to be filed by Buyer with the SEC or any financing Buyer may seek.
- 14.17 **Publicity.** The parties hereto agree that they will consult with each other concerning any proposed press release or public announcement pertaining to the transactions contemplated hereby and shall use their best efforts to agree upon the text of any such press release or the making of such public announcement. The parties hereto agree that the issuance of any such press release or announcement shall not be a violation of the Confidentiality Agreement.
- 14.18 **Note Redemption.** Notwithstanding the terms of the Subordinated Promissory Note, during the period that Seller or any of its Affiliates holds any portion of the Subordinated Promissory Note, Buyer shall have the right to repurchase all or such portion of the Subordinated Promissory Note then held by Seller or its Affiliates by paying to Seller in immediately available funds an amount equal to the outstanding principal amount of the portion of the Subordinated Promissory Note to be repurchased, together with the payment of all interest accrued on the amount so repurchased through the date such repurchase occurs, so long as, after such repurchase, unless Buyer repurchases all of the Subordinated Promissory Note then held by Seller or its Affiliates, the outstanding principal amount of the Subordinated Promissory Note shall equal or exceed \$150,000,000. Buyer shall give Seller at least fifteen (15) days written notice of its election to exercise such right. Seller agrees to cause its Affiliates to comply with the provision of this Section 14.18 and will give Buyer at least ten (10) days written notice of any proposed transfer of all or part of the Subordinated Promissory Note.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

**SELLER:**

**BUYER:**

**CONAGRA FOODS, INC.,**

**PILGRIM S PRIDE CORPORATION,**

a Delaware corporation

a Delaware corporation

By:           /s/ Dwight J. Goslee          

By:           /s/ Lonnie A. Pilgrim          

Its: Exec. V.P.

Its: Chairman of the Board

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**Annex E**

**AMENDMENT NO. 1 TO STOCK PURCHASE AGREEMENT**

This Amendment No. 1 to Stock Purchase Agreement (this Amendment ), dated as of August 11, 2003, is entered into between Pilgrim's Pride Corporation, a Delaware corporation ( Buyer ), and ConAgra Foods, Inc., a Delaware corporation ( Seller ).

**RECITALS:**

A. Buyer and Seller entered into a Stock Purchase Agreement dated as of June 7, 2003 (the Agreement ).

B. Section 14.2 of the Agreement provides that it may be modified or amended by an instrument in writing, signed by the party against whom enforcement of such modification or amendment is sought.

C. Buyer and Seller desire to amend the Agreement to permit Buyer to pay cash to Seller at Closing or thereafter in payment of all or part of that portion of the Purchase Price that the Agreement provided was to be represented by the Subordinated Promissory Note, subject to certain limitations.

**AGREEMENT:**

In consideration of the promises and mutual agreements contained herein and in the Agreement, the parties hereto agree as follows:

1. **Definitions.** All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

2. **Payment of Cash in Lieu of Note Portion.** Each of Buyer and Seller agree that, notwithstanding anything to the contrary in the Agreement, Buyer may, at its option, (a) pay cash to Seller in lieu of all or part of that portion of the Purchase Price that the Agreement provided was to be represented by the Subordinated Promissory Note; provided, however, that if Buyer issues the Subordinated Promissory Note in payment of a portion of the Purchase Price, the initial principal amount of such Subordinated Promissory Note must be at least \$100 million, or such lesser amount as may be acceptable in writing to Seller; and (b) at any time redeem from Seller, in whole or in part, any Subordinated Promissory Note issued to Seller; provided, however, that without Seller's prior written consent Buyer may not redeem less than 100% of any Subordinated Promissory Note held by Seller if Seller at the time holds less than, or the redemption would result in Seller holding less than, \$100 million principal amount of such note, or such lesser amount as may be acceptable in writing to Seller. All references to \$150 million in the Agreement or in the Optional Redemption section of Exhibit 1.1(k) to the Agreement shall be amended to refer to \$100 million.



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3. **Miscellaneous.**

3.1. **Ratification; Entire Agreement.** This Amendment shall not effect any terms or provisions of the Agreement other than those amended hereby and is only intended to amend, alter or modify the Agreement as expressly stated herein. Except as amended hereby, the Agreement remains in effect, enforceable against each of the parties, and is hereby ratified and acknowledged by each of the parties. The Agreement, as amended by this Amendment, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supercedes any prior or contemporaneous agreements, whether oral or written, among the parties with respect to the subject matter hereof. No amendment or modification of this Amendment shall be effective unless made in writing and duly executed by the parties hereto.

3.2. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

3.3 **No Waiver.** The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any party under the Agreement or any other document, instrument or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein, except as specifically set forth herein.

3.4. **Applicable Law.** This Amendment and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in Delaware (without regard to conflicts of law doctrines).

3.5. **Successors and Assigns.** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns; provided that Section 2(b) shall not be binding upon any holder of the Subordinated Promissory Note other than Seller and its Affiliates.

3.6. **Effect of Headings.** The headings of the various sections and subsections herein are inserted merely as a matter of convenience and for reference and shall not be construed as in any manner defining, limiting, or describing the scope or intent of the particular sections to which they refer, or as affecting the meaning or construction of the language in the body of such sections.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the date first above written.

**SELLER:**

CONAGRA FOODS, INC.,

a Delaware corporation

**BUYER:**

PILGRIM S PRIDE CORPORATION,

a Delaware corporation



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By: /s/ Dwight J. Goslee

By: /s/ Richard A. Cogdill

Its: EVP

Its: Chief Financial Officer

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**Annex F**

**AMENDMENT NO. 2 TO STOCK PURCHASE AGREEMENT**

This Amendment No. 2 to Stock Purchase Agreement (this Amendment ), dated as of August 20, 2003, is entered into between Pilgrim's Pride Corporation, a Delaware corporation (Buyer ), and ConAgra Foods, Inc., a Delaware corporation (Seller ).

**RECITALS:**

A. Buyer and Seller entered into a Stock Purchase Agreement, dated as of June 7, 2003, which was amended by Amendment No. 1 to Stock Purchase Agreement, dated August 11, 2003 (collectively, the Agreement ).

B. Section 14.2 of the Agreement provides that it may be modified or amended by an instrument in writing, signed by the party against whom enforcement of such modification or amendment is sought.

C. Seller's consent is required pursuant to Section 9.2.1 of the Agreement in the event Buyer wishes to amend its certificate of incorporation prior to the Closing or authorize for issuance any shares of capital stock.

D. Buyer wishes to reclassify its current Class A common stock and Class B common stock into a single class of common stock as described in the form of Certificate of Amendment of Certificate of Incorporation of Buyer attached hereto as Annex A (the Reclassification ).

E. Buyer and Seller desire to amend the Agreement to provide for the Reclassification.

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**AGREEMENT:**

In consideration of the promises and mutual agreements contained herein and in the Agreement, the parties hereto agree as follows:

1. **Definitions.** All capitalized terms used but not defined herein shall have the meanings given to them in the Agreement.

2. **Reclassification of Pilgrim s Pride Common Stock.**

2.1. **Seller s Consent.** Seller hereby consents to Buyer effecting the Reclassification prior to the Closing of the transactions contemplated by the Agreement. Each of Buyer and Seller further agree that, notwithstanding anything to the contrary in the Agreement, if the Reclassification is effected prior to the Closing, Seller shall receive shares of the common stock of Buyer described in Annex A hereto, rather than shares of Class A common stock of Buyer, and all references to Shares shall mean such shares of the common stock of Buyer described in Annex A hereto to be delivered to Seller under the Agreement. If the Reclassification is effected prior to the end of the Reference Period (as defined below), then all references to Class A common stock in Section 3.3.7 of the Agreement shall mean the common stock of Buyer described in Annex A hereto for all periods subsequent to the effective time of the Reclassification.

2.2. **Calculation of Shares to be Delivered to Buyer Under the Agreement.** The parties agree that the Agreement shall be amended by adding thereto a new Section 3.3.7 to read in its entirety as follows:

3.3.7 **Alternative Calculation of Shares to be Delivered to Buyer.**

(a) **Definitions Used in Section 3.3.7.** As used in this Section 3.3.7, the following terms shall have the following meanings:

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(i) Adjusted VWAP means VWAP of the Class A common stock computed over the Reference Period, except that: (a) if the VWAP Adjustment Amount is greater than zero, then in lieu of the actual trading price of the Class A common stock over the Subsequent Period, such Adjusted VWAP shall be computed as if all trades in such stock during the Subsequent Period occurred at the VWAP of the Class A common stock for the Measurement Period, plus the VWAP Adjustment Amount; and (b) if (I) the VWAP of the Class A common stock during the Subsequent Period is greater than the VWAP of such stock during the Measurement Period, and (II) the average daily volume of the Class A common stock during the Initial Period is less than the average daily trading volume of such stock during the Subsequent Period, then in lieu of the actual trading volume of the Class A common stock over the Subsequent Period, such Adjusted VWAP shall be computed as if the volume of trades during each day in the Subsequent Period was equal to the average daily trading volume of the Class A common stock during the Initial Period.

(ii) Discount Percentage means the VWAP of the Class B common stock of Buyer, minus the VWAP of the Class A common stock, expressed as a percentage of the VWAP of the Class A common stock.

(iii) Initial Period means June 10, 2003 through and including August 21, 2003.

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(iv) Measurement Period means the ten (10) trading days preceding August 22, 2003.

(v) Reference Period means June 10, 2003 through and including the date that is five trading days prior to the Closing Date.

(vi) Subsequent Period means August 22, 2003 through and including the date that is five trading days prior to the Closing Date.

(vii) VWAP means the volume weighted average price of Buyer's Class A common stock or Class B common stock, as applicable, on the New York Stock Exchange, as reported by Bloomberg, L.P.

(viii) VWAP Adjustment Amount means 50% of the difference between the VWAP of the Class A common stock over the Subsequent Period minus the VWAP of the Class A common stock over the Measurement Period, but shall not be less than zero.

(b) Alternative Calculation. Notwithstanding anything to the contrary in this Agreement, in the event the Discount Percentage over the Subsequent Period is less than thirty-five percent (35%), the following provision shall be used to compute the number of Shares to be delivered to Buyer at Closing, rather than the number of Shares computed based upon the provisions of Section 3.3.2 above. The number of Shares to be issued to Seller at Closing shall be equal to the lesser of 39,400,000 or the number of Shares determined by dividing: (i) forty-five percent (45%) of the Estimated Purchase Price by (ii) the greater of (1) the Adjusted VWAP during the Reference Period and

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(2) \$5.35. The value of such Shares for purposes of determining the amount of the Subordinated Promissory Note shall be equal to such number of Shares multiplied by the greater of the Adjusted VWAP and \$5.35.

3. **Miscellaneous.**

3.1. **Ratification; Entire Agreement.** This Amendment shall not effect any terms or provisions of the Agreement other than those amended hereby and is only intended to amend, alter or modify the Agreement as expressly stated herein. Except as amended hereby, the Agreement remains in effect, enforceable against each of the parties, and is hereby ratified and acknowledged by each of the parties. The Agreement, as amended by this Amendment, constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supercedes any prior or contemporaneous agreements, whether oral or written, among the parties with respect to the subject matter hereof. No amendment or modification of this Amendment shall be effective unless made in writing and duly executed by the parties hereto.

3.2. **Counterparts.** This Amendment may be executed in one or more counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same instrument.

3.3 **No Waiver.** The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any party under the Agreement or any other document, instrument or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein, except as specifically set forth herein.



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**Annex G**

**DESCRIPTION OF NOTES**

You can find the definitions of certain terms used in this description under the subheading "Certain Definitions." In this description, the word "Company" refers only to Pilgrim's Pride Corporation and not to any of its subsidiaries. In addition, in this description, the term "Holder" refers to the record holder of any Note.

The Company will issue the Note in payment of a portion of the purchase price of all of the chicken business of ConAgra Foods, Inc. through the acquisition of all of the issued and outstanding capital stock of ConAgra Poultry Company, To-Ricos, Inc., Lovette Company, Inc. and Hester Industries, Inc. (collectively, the "Acquired Companies"), each a wholly-owned subsidiary of ConAgra Foods, Inc. (the "Acquisition"). The Notes will be issued under an Indenture dated as of \_\_\_\_\_, 2003 (the "Indenture") between the Company and \_\_\_\_\_, as trustee (the "Trustee"). The terms of the Notes include those stated in the Indenture and those made part of the Indenture and by reference to the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

The following description is a summary of the material provisions of the Indenture.

**BRIEF DESCRIPTION OF THE NOTES**

The Notes:

will be general unsecured obligations of the Company; and

are expressly subordinated in right of payment to all existing and future Senior Indebtedness of the Company.

**PRINCIPAL, MATURITY AND INTEREST**

At the closing of the Acquisition, the Company will issue a Note with a principal amount of \$\_\_\_\_\_ million based on an estimated combined, consolidated stockholders' equity of the Acquired Companies. The final determination of the purchase price for the Acquired Companies will be subject to a post-closing audit of the final combined, consolidated balance sheet of the Acquired Companies as of the closing date of the Acquisition. Any reduction or increase in the purchase price will be made by the Company, paying the amount in cash, issuing a new Note in exchange for the original Note issued at the closing of the Acquisition, or a combination thereof. In the event a new Note is issued, the Holder of the Note will be required to surrender the original Note, and the new Note will be on the same terms and conditions as the Note issued at the closing of the Acquisition except that the principal balance will be decreased or increased by an amount equal to the difference between the final combined, consolidated stockholders' equity of the Acquired Companies based on the post-closing audit and the estimated stockholders' equity of



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the Acquired Companies used to determine the estimated purchase price.

The Notes will mature on March 4, 2011. Interest on the Notes will accrue at the rate of 10.50% per annum and will be payable semi-annually in arrears on December 15 and June 15, commencing on \_\_\_\_\_. The Company will make each interest payment, including any Special Interest, to the Holders of record on the immediately preceding December 1 and June 1.

Interest on the Notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

### **ADDITIONAL NOTES**

Subject to the limitations set forth under Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock, the Company may incur additional Indebtedness up to an aggregate principal amount of \$\_\_\_\_\_ [one-half of the Notes] which, at its option, may consist of additional Notes, in one or more series, having identical

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terms as the Notes issued on the date of the Indenture (the Additional Notes ). Holders of such Additional Notes will have the right to vote together with Holders of Notes issued on the date of the Indenture as one class.

**SUBSIDIARY GUARANTEES**

The Indenture will require that each Domestic Restricted Subsidiary (other than any Securitization Subsidiary that has entered into or established a Permitted Securitization Program) that incurs any Indebtedness (other than intercompany Indebtedness between or among such Domestic Restricted Subsidiary and the Company or any of its Restricted Subsidiaries) which is pari passu with or subordinate in right of payment to the Notes guarantee the obligations of the Company under the Notes (including the payment of principal, premium, if any, and interest on the Notes) by entering into a supplemental indenture with the Company and the Trustee (each such Domestic Restricted Subsidiary and any other Restricted Subsidiary that guarantees the Notes in accordance with the Indenture being referred to herein as a Guarantor ). The Indenture will provide that any such Domestic Restricted Subsidiary must become a Guarantor and execute a supplemental indenture and deliver an opinion of counsel to the Trustee within 10 business days of the date on which it was acquired, created or incurred such Indebtedness.

Any Guarantors will be jointly and severally liable with respect to the Company's obligations under the Notes. Each such guarantee of the Notes (a Subsidiary Guarantee ) will be a general unsecured obligation of the Guarantor thereunder and will be expressly subordinated in right of payment to all existing and future Senior Indebtedness of such Guarantor. The obligations of each Guarantor under its Subsidiary Guarantee will be limited as necessary to prevent that Subsidiary Guarantee from constituting a fraudulent conveyance under applicable law.

A Guarantor may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person), another Person, other than the Company or another Guarantor, unless:

(1) immediately after giving effect to that transaction, no Default or Event of Default exists; and

(2) either:

(a) the Person acquiring the property in any such sale or disposition, or the Person formed by or surviving any such consolidation or merger (if such surviving Person is not the Guarantor), assumes all the obligations of that Guarantor under the Indenture and its Subsidiary Guarantee pursuant to a supplemental indenture satisfactory to the Trustee; or

(b) the Net Proceeds of such sale or other disposition are applied in accordance with the Asset Sale provisions of the Indenture.

The Subsidiary Guarantee of a Guarantor will be released and such Person shall no longer be deemed a Guarantor for purposes of the Indenture:

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(1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the Net Proceeds of that sale or other disposition are applied in accordance with the Asset Sale provisions of the Indenture;

(2) in connection with any sale of all of the Capital Stock of a Guarantor to a Person (including by way of merger or consolidation) that is not (either before or after giving effect to such transaction) a Subsidiary of the Company, if the Net Proceeds of that sale are applied (or the Company certifies in an Officer's Certificate delivered to the Trustee that such Net Proceeds will be applied) in accordance with the Asset Sale provisions of the Indenture;

(3) if the Company properly designates the Guarantor as an Unrestricted Subsidiary; or

(4) if all Indebtedness and Guaranteed Indebtedness of such Guarantor has been paid in full or otherwise discharged.

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See Repurchase at the Option of Holders Asset Sales.

**OPTIONAL REDEMPTION**

At any time prior to \_\_\_\_\_, 2007, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes issued under the Indenture (including, if issued, any Additional Notes) at a redemption price of 110.5% of the principal amount thereof, plus accrued and unpaid interest, if any, to the redemption date, with the net cash proceeds of one or more Public Equity Offerings; provided, that:

- (1) at least 65% of the aggregate principal amount of Notes issued under the Indenture (including, if issued, any Additional Notes) remains outstanding immediately after the occurrence of such redemption (excluding Notes held by the Company and its Subsidiaries); and
- (2) the redemption must occur within 45 days of the date of the closing of such Public Equity Offering.

Except pursuant to the preceding paragraph and the last paragraph in this section, the Notes will not be redeemable at the Company's option prior to \_\_\_\_\_, 2007.

On or after \_\_\_\_\_, 2007, the Company may redeem all or a part of the Notes upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest, if any, thereon to the applicable redemption date, if redeemed during the twelve-month period beginning on September 15 of the years indicated below:

<b>Year</b>	<b>Percentage</b>
2007	105.250%
2008	102.625%
2009 and thereafter	100.000%

Notwithstanding the foregoing, the Company may, at any time and from time to time, redeem all or a part of the Notes from any Initial Holder upon not less than 15 nor more than 60 days' notice, at a redemption price of 100.000% of the principal amount thereof, plus accrued and unpaid interest, if any. The Company may not, however, redeem less than all of the Notes from any Initial Holder if the Initial Holders hold less than, or the redemption would result in the Initial Holders holding less than, an aggregate of \$100 million in principal amount of the Notes.

**MANDATORY REDEMPTION**

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Note.

**REPURCHASE AT THE OPTION OF HOLDERS**

*Change of Control*

If a Change of Control occurs, each Holder of Notes will have the right to require the Company to repurchase all or any part (equal to \$1,000 or an integral multiple thereof) of that Holder's Notes pursuant to a Change of Control Offer on the terms set forth in the Indenture. In the Change of Control Offer, the Company will offer a Change of Control Payment in cash equal to (a) in the case of an Initial Holder, 100% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, thereon to the date of purchase and (b) in the case of all other Holders, 101% of the aggregate principal amount of Notes repurchased plus accrued and unpaid interest, if any, thereon to the date of purchase. Within 90 days following any Change of Control, unless the Company has mailed a redemption notice with respect to all of the outstanding Notes in accordance with the Optional Redemption provisions of the Indenture, the Company will mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the Change of Control Payment Date specified in such notice which date shall be no earlier than 15 days and no later than 60 days from the date such notice is mailed, pursuant to the procedures required by the Indenture and described in such

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notice. The Company will comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934 and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of the Indenture by virtue of such conflict.

On the Change of Control Payment Date, the Company will, to the extent lawful:

- (1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;
- (2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions thereof so tendered; and
- (3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

The Paying Agent will promptly mail to each Holder of Notes so tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; provided, that each such new Note will be in a principal amount of \$1,000 or an integral multiple thereof. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The provisions described above that require the Company to make a Change of Control Offer following a Change of Control will be applicable regardless of whether or not any other provisions of the Indenture are applicable. Except as described above with respect to a Change of Control, the Indenture does not contain provisions that permit the Holders of the Notes to require that the Company repurchase or redeem the Notes in the event of a takeover, recapitalization or similar transaction.

The Company will not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

***Asset Sales***

The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

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(1) the Company (or the Restricted Subsidiary, as the case may be) receives consideration at the time of such Asset Sale at least equal to the fair market value of the assets or Equity Interests issued or sold or otherwise disposed of;

(2) such fair market value is determined by the Company's Board of Directors and evidenced by a resolution of the Board of Directors and, if such fair market value exceeds \$50 million, is set forth in an Officers' Certificate delivered to the Trustee; and

(3) at least 75% of the consideration therefor received by the Company or such Restricted Subsidiary is in the form of cash, Cash Equivalents or assets or Voting Stock of a type referred to in clauses (2), (3) or (4) immediately below.

For purposes of this provision, each of the following shall be deemed to be cash:

(a) any liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or any Restricted Subsidiary (other than contingent liabilities and

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liabilities that are by their terms subordinated to the Notes or any Subsidiary Guarantee) that are assumed by the transferee of any such assets pursuant to a novation agreement that releases the Company or such Restricted Subsidiary from further liability; and

(b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in that conversion) within 90 days of the related Asset Sale.

Within 270 days after the receipt of any Net Proceeds from an Asset Sale, the Company may, at its option:

(1) apply such Net Proceeds to permanently repay, purchase or retire unsubordinated Indebtedness of the Company or any Restricted Subsidiary;

(2) apply such Net Proceeds to acquire all or substantially all of the assets of, or a majority of the Voting Stock of, another business reasonably related to the business of the Company;

(3) apply such Net Proceeds to make a capital expenditure used or useful in the Company's business;

(4) apply such Net Proceeds to acquire other long-term assets that are used or useful in the Company's business; or

(5) enter into a binding agreement with respect to the application of such Net Proceeds described in clauses (2), (3) or (4) above and apply such Net Proceeds pursuant thereto within 360 days of receipt by the Company of such Net Proceeds.

Pending the final application of any such Net Proceeds, the Company may temporarily reduce revolving credit borrowings or otherwise invest such Net Proceeds in any manner that is not prohibited by the Indenture.

Any Net Proceeds from Asset Sales that are not applied or invested as provided in the preceding paragraph will constitute Excess Proceeds. When the aggregate amount of Excess Proceeds exceeds \$20.0 million, then within 45 business days after the later of the application of Net Proceeds in accordance with the preceding paragraph and the date that is 270 days following the receipt of the Net Proceeds, to the extent of the balance of the net Proceeds after application in accordance with the preceding paragraph, the Company will make an Asset Sale Offer to all Holders of Notes and all holders of other Indebtedness that is pari passu with the Notes containing provisions similar to those set forth in the Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets to purchase the maximum principal amount of Notes and such other pari passu Indebtedness that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of principal amount plus accrued and unpaid interest, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use such Excess Proceeds for any purpose not otherwise prohibited by the Indenture. If the aggregate principal amount of Notes and such other pari passu Indebtedness tendered into such Asset Sale Offer exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such other pari passu Indebtedness to be purchased on a pro rata basis based



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on the principal amount of Notes and such other pari passu Indebtedness tendered. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

The Company will comply with the requirements of Rule 14e-1 under the Securities Exchange Act of 1934 and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the Asset Sale provisions of the Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Asset Sale provisions of the Indenture by virtue of such conflict.

### **FALL-AWAY EVENT**

The obligations of the Company and its Restricted Subsidiaries to comply with the provisions of the Indenture described under the captions Repurchase at the Option of the Holders Change of Control, Certain

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Covenants Restricted Payments, Incurrence of Indebtedness and Issuance of Preferred Stock, Liens, Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries, Issuances of Guarantees by Domestic Restricted Subsidiaries, Limitation on Issuance and Sale of Equity Interests in Restricted Subsidiaries, and the Transactions with Affiliates, and the requirement set forth under clause (4) of the first paragraph under Merger, Consolidation, or Sale of Assets, will terminate if and when the Notes shall achieve Investment Grade Status (a Fall-Away Event ).

**CERTAIN COVENANTS**

***Restricted Payments***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving the Company or any of its Restricted Subsidiaries) or to the direct or indirect holders of the Company's or any of its Restricted Subsidiaries' Equity Interests in their capacity as such (other than dividends or distributions payable (a) in Equity Interests (other than Disqualified Stock) of the Company or (b) to the Company or a Restricted Subsidiary of the Company);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company) any Equity Interests of the Company or any direct or indirect parent of the Company or any Restricted Subsidiary of the Company (other than any such Equity Interests owned by the Company or any Restricted Subsidiary of the Company);

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness that is subordinated to the Notes or the Subsidiary Guarantees, except a payment of interest or principal to a Wholly Owned Restricted Subsidiary of the Company or at the Stated Maturity thereof; or

(4) make any Restricted Investment (all such payments and other actions set forth in clauses (1) through (4) above being collectively referred to as Restricted Payments ),

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; and

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(2) the Company would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the applicable eight-quarter period, have been permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described below under the caption Incurrence of Indebtedness and Issuance of Preferred Stock; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Company and its Subsidiaries after the date of the Indenture (excluding Restricted Payments permitted by clauses (1), (2), (3) and (7) of the next succeeding paragraph) is less than the sum, without duplication, of

(a) 50% of the Consolidated Net Income of the Company for the period (taken as one accounting period) from the beginning of the fiscal quarter beginning immediately prior to the date of the Indenture to the end of the Company's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), plus

(b) 100% of the aggregate net cash proceeds received by the Company since the date of the Indenture as a contribution to its common equity capital or from the issue or sale of Equity Interests of the Company (other than Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of the Company that have

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been converted into or exchanged for such Equity Interests (other than Equity Interests (or Disqualified Stock or debt securities) sold to a Restricted Subsidiary of the Company), plus

(c) to the extent that any Restricted Investment that was made after the date of the Indenture is sold for cash or otherwise liquidated or repaid for cash, the lesser of (i) the cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any) and (ii) the initial amount of such Restricted Investment, plus (d) if any Unrestricted Subsidiary is redesignated as a Restricted Subsidiary, the fair market value of such redesignated Subsidiary (as determined in good faith by the Board of Directors) as of the date of its redesignation, not to exceed in the case of any Subsidiary the amount of Restricted Investments previously made by the Company or any of its Restricted Subsidiaries in such Unrestricted Subsidiary (subsequent to the date of the Indenture) which were treated as Restricted Payments (other than any such Restricted Payment that was made pursuant to the provisions of paragraphs (1) through (6) below).

The preceding provisions will not prohibit the payment of any dividend within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of the Indenture. In addition, so long as no Default has occurred and is continuing or would be caused thereby, the preceding provisions will not prohibit:

(1) the redemption, repurchase, retirement, defeasance or other acquisition of any subordinated Indebtedness of the Company or any Restricted Subsidiary or of any Equity Interests of the Company in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of, Equity Interests of the Company (other than Disqualified Stock) or Indebtedness of the Company which is subordinate or junior in right of payment to the Notes and has a Weighted Average Life to Maturity no less than that of the Indebtedness being refinanced; provided, that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition shall be excluded from clause (3)(b) of the preceding paragraph;

(2) the defeasance, redemption, repurchase or other acquisition of subordinated Indebtedness of the Company or any Restricted Subsidiary with the net cash proceeds from an incurrence of Permitted Refinancing Indebtedness; provided, that the amount of any such net cash proceeds that are utilized for any such defeasance, redemption, repurchase or other acquisition shall be excluded from clause (3)(b) of the preceding paragraph;

(3) Investments made out of the net cash proceeds of a substantially concurrent issue and sale (other than to a Subsidiary of the Company) of Equity Interests (other than Disqualified Stock) of the Company; provided, that the amount of any such net cash proceeds that are utilized for any such Investment shall be excluded from clause (3)(b) of the preceding paragraph;

(4) the payment of any dividend or distribution by a Restricted Subsidiary of the Company to the holders of its common Equity Interests on a pro rata basis so long as the Company or one of its Restricted Subsidiaries receives at least a pro rata share (and in like form) of the dividend or distribution in accordance with its common Equity Interests;

(5) the payment by the Company of cash dividends on its common stock in an aggregate amount up to \$10.0 million per year;

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(6) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company or any Restricted Subsidiary of the Company held by any member of the management or the Board of Directors of the Company or any Restricted Subsidiary pursuant to any equity subscription agreement, stock option agreement or similar agreement approved by the Board of Directors of the Company; provided, that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests shall not exceed \$1 million in any twelve-month period; and

(7) other Restricted Payments in an aggregate amount not to exceed \$50.0 million.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued to or by the Company or such

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Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any assets or securities that are required to be valued by this covenant shall be determined by the Board of Directors and set forth in a resolution. The Board of Directors' determination must be based upon an opinion or appraisal issued by an accounting, appraisal or investment banking firm of national standing or appraisal firm acceptable to the Trustee if the fair market value exceeds \$50.0 million. Not later than the date of making any Restricted Payment with a fair market value in excess of \$50.0 million, the Company shall deliver to the Trustee an Officers' Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this Restricted Payments covenant were computed, together with a description and amounts of all Restricted Payments made by the Company pursuant to this Restricted Payments covenant since the date of the most recently delivered Officers' Certificate pursuant to this paragraph (or, if none, the date of the Indenture), together with a copy of any fairness opinion or appraisal required by the Indenture.

***Incurrence of Indebtedness and Issuance of Preferred Stock***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Company will not issue any Disqualified Stock and will not permit any of its Restricted Subsidiaries to issue any shares of Preferred Stock; provided, however, that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and the Domestic Restricted Subsidiaries and any other Guarantors may incur Indebtedness or issue Preferred Stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended eight full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Preferred Stock or Disqualified Stock is issued would have been at least 2.0 to 1, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Preferred Stock or Disqualified Stock had been issued, as the case may be, at the beginning of such eight-quarter period.

The first paragraph of this covenant will not prohibit the incurrence or issuance of any of the following items of Indebtedness or Preferred Stock (collectively, "Permitted Debt"):

(1) the incurrence by the Company or any Guarantor of Indebtedness (and any replacements, renewals, refinancings, extensions or amendments of any thereof) in an aggregate principal amount at any one time outstanding as of the date of any such incurrence under this clause (1) not to exceed an amount equal to the greater of (x) \$585.0 million, less the aggregate amount of all Net Proceeds of Asset Sales (other than a sale of all or a substantial portion of the assets used in or related to the Turkey Operations) applied by the Company or any of its Subsidiaries to repay Indebtedness incurred under this clause (1) pursuant to the covenant described above under the caption "Repurchase at the Option of Holders' Asset Sales" and (y) 75% of the fair market value of property, plant, equipment and intangibles (excluding goodwill) of the Company and its consolidated Restricted Subsidiaries;

(2) the incurrence by the Company or any Restricted Subsidiary of Indebtedness pursuant to a revolving credit facility under the Existing U.S. Credit Facilities (and any replacements, renewals, refinancings, extensions or amendments of any thereof) in an aggregate principal amount outstanding at any one time as of the date of any such incurrence under this clause (2) not to exceed the Domestic Borrowing Base;

(3) the incurrence of Indebtedness by the Foreign Restricted Subsidiaries pursuant to the Existing Foreign Credit Facility (and any replacements, renewals, refinancings, extensions or amendments thereof) in an aggregate principal amount outstanding at any one time as of the date of any such incurrence under this clause (3) not to exceed the greater of (x) \$50.0 million and (y) the Foreign Borrowing Base;

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(4) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes to be issued on the date of the Indenture or as described in the first paragraph under "Principal, Maturity and Interest" (including, in each case, any Subsidiary Guarantees);

(5) the incurrence by the Company or any of its Restricted Subsidiaries of purchase money obligations incurred in the ordinary course of business in an amount outstanding at any one time as of the date of any such incurrence not to exceed 75% of the purchase price or fair market value of the asset purchased, acquired or constructed;

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(6) the incurrence by the Company or any of its Restricted Subsidiaries of Capital Lease Obligations incurred in the ordinary course of business in an amount outstanding at any one time as of the date of any such incurrence not to exceed 5% of the Company's Consolidated Tangible Net Worth;

(7) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations pursuant to which the Company or the Restricted Subsidiary has hedged against its actual exposure to fluctuations in interest rates, currency values or commodity prices;

(8) the incurrence by the Company or any Restricted Subsidiary of up to \$25.0 million aggregate principal amount of Indebtedness to the Camp County Industrial Development Corporation pursuant to that certain Loan Agreement (the "Camp County Loan Agreement"), dated as of June 15, 1999, between the Company and the Camp County Industrial Development Corporation, including the incurrence by the Company or any Guarantor of Indebtedness to Harris Trust and Savings Bank pursuant to the Reimbursement Agreement dated June 15, 1999 between the Company and Harris Trust and Savings Bank, or under any irrevocable letter of credit, surety bond, insurance policy or other similar instrument issued by any Person to support the Company's or any Restricted Subsidiary's Obligations pursuant to the Camp County Loan Agreement or in connection with the related bonds issued by the Camp County Industrial Development Corporation (and reimbursement and similar agreements in respect thereof) and any Permitted Refinancing Indebtedness relating thereto; provided, that such \$25.0 million and any corresponding credit enhancement or reimbursement obligation with respect thereto shall be reduced by any prepayments or scheduled payments under the Camp County Loan Agreement;

(9) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding under this clause (9) not to exceed \$150 million;

(10) the incurrence by the Company or any Restricted Subsidiary of up to \$82.5 million aggregate principal amount of Indebtedness to the issuer of industrial development bonds and similar Indebtedness outstanding as of the date of the Indenture, including the incurrence by the Company or any Restricted Subsidiary of Indebtedness to the issuer of any irrevocable letter of credit, surety bond, insurance policy or other similar instrument issued by any Person to support the Company's or any Restricted Subsidiary's Obligations pursuant to or in connection with such related industrial revenue bonds (and reimbursement and similar agreements in respect thereof); provided, that such \$82.5 million and any corresponding credit enhancement or reimbursement obligation with respect thereto shall be reduced by any prepayments or scheduled payments in respect of such industrial revenue bonds or Indebtedness;

(11) the incurrence by the Company or any of its Restricted Subsidiaries of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness (other than intercompany Indebtedness) under the Senior Notes and the Senior Notes Indenture or that was permitted by the Indenture to be incurred under the first paragraph of this covenant or clauses (1), (2), (3), (5), (6), (8), (10) or (14) of this paragraph;

(12) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness; provided, however, that:

(a) if the Company or any Guarantor is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Note, in the case of the Company, or the Subsidiary Guarantee, in the case of a Guarantor; and



(b) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than the Company or a Restricted Subsidiary thereof and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either the Company or a Restricted Subsidiary thereof shall be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (12);

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(13) the guarantee by the Company or any of its Restricted Subsidiaries of Indebtedness of the Company or a Restricted Subsidiary that was permitted to be incurred by another provision of this covenant and, in the case of a Domestic Restricted Subsidiary, the provisions of the covenant set forth under the caption Issuances of Guarantees by Domestic Restricted Subsidiaries ;

(14) Indebtedness of the Company to the extent the net proceeds thereof are promptly (a) used to purchase Notes tendered in a Change of Control Offer made as a result of a Change of Control in accordance with the Indenture or (b) deposited to defease the Notes;

(15) the accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this covenant; provided, in each such case, that the amount thereof is included in Fixed Charges of the Company as accrued; and

(16) the issuance of Preferred Stock to the Company or a Wholly Owned Restricted Subsidiary.

For purposes of determining compliance with this Incurrence of Indebtedness and Issuance of Preferred Stock covenant, (a) in the event that an item of proposed Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (16) above, or is entitled to be incurred pursuant to the first paragraph of this covenant, the Company will be permitted to classify such item of Indebtedness on the date of its incurrence, or reclassify all or a portion of such item of Indebtedness, in any manner that complies with this covenant; provided, that (x) Indebtedness outstanding under the Existing U.S. Credit Facilities on the date of the Indenture will be deemed to have been incurred on such date in reliance on the exception provided in clauses (1) and (2), as applicable, of the definition of Permitted Debt above and (y) Indebtedness outstanding under the Existing Foreign Credit Facility on the date of the Indenture will be deemed to have been incurred on such date in reliance on the exception provided in clause (3) of the definition of Permitted Debt above, and (b) with respect to Indebtedness denominated in a currency other than United States dollars, the Company or any of its Restricted Subsidiaries shall not have been deemed to incur Indebtedness solely as a result of fluctuations in the exchange rates of currencies.

***Liens***

The Company shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, incur or suffer to exist any Lien (other than Permitted Liens or Liens securing Senior Indebtedness) upon any of its assets (including Capital Stock of a Restricted Subsidiary), whether owned at the date the Notes are first issued or thereafter acquired, or any interest therein or any income or profits therefrom, unless:

(1) if such Lien secures Senior Subordinated Indebtedness, the Notes or the Guarantees are secured on an equal and ratable basis with such Indebtedness for so long as such Senior Subordinated Indebtedness is secured by such Lien; and

(2) if such Lien secures Subordinated Indebtedness, the Lien securing such Subordinated Indebtedness will be subordinated and junior to a Lien securing the Notes or the Guarantees, as the case may be, with the same relative priority as such Indebtedness has with respect to the Notes or the Guarantees.

*Limitations on Layered Debt*

The Company shall not, and shall not permit any Restricted Subsidiary, to incur, directly or indirectly, any Indebtedness that is subordinate or junior in right of payment of any Senior Indebtedness unless such Indebtedness is Senior Subordinated Debt or is expressly subordinated in right of payment to, or ranks pari passu with, the Notes or Subsidiary Guarantees, as the case may be. In addition, no Guarantor shall Guarantee, directly or indirectly, any Indebtedness of the Company that is subordinate or junior in right of payment to any Senior Indebtedness unless such Guarantee is expressly subordinated in right of payment to, or ranks pari passu, with, the Subsidiary Guarantee of such Guarantor.

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***Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries***

The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions on its Capital Stock to the Company or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to the Company or any of its Restricted Subsidiaries;
- (2) make loans or advances to the Company or any of its Restricted Subsidiaries; or
- (3) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries.

However, the preceding restrictions will not apply to encumbrances or restrictions existing under or by reason of:

- (1) Existing Credit Facilities as in effect on the date of the Indenture and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings thereof, provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other payment restrictions than those contained in such Existing Credit Facilities, as in effect on the date of the Indenture;
- (2) the Indenture, the Subsidiary Guarantee, the Notes and any additional notes that are issued under the Indenture;
- (3) applicable law;
- (4) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired, provided, that, in the case of Indebtedness, such Indebtedness was permitted by the terms of the Indenture to be incurred;
- (5) customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices;

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(6) purchase money obligations for property acquired in the ordinary course of business that impose restrictions on the property so acquired of the nature described in clause (3) of the preceding paragraph;

(7) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Subsidiary pending its sale or other disposition;

(8) Permitted Refinancing Indebtedness, provided, that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(9) Liens securing Indebtedness that limit the right of the debtor to dispose of the assets subject to such Liens;

(10) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, assets sale agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business;

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(11) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(12) customary restrictions imposed on any Securitization Subsidiary in connection with a Permitted Securitization Program, including, without limitation, those imposed on Pilgrim's Pride Funding Corporation on the date of the Indenture; and

(13) the Senior Notes Indenture, the Senior Guarantee and the Senior Notes.

***Merger, Consolidation, or Sale of Assets***

The Company may not, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not the Company is the surviving corporation); or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either: (a) the Company is the surviving corporation; or (b) the Person formed by or surviving any such consolidation or merger (if other than the Company) or to which such sale, assignment, transfer, conveyance or other disposition shall have been made is a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Company) or the Person to which such sale, assignment, transfer, conveyance or other disposition shall have been made assumes all the obligations of the Company under the Notes and the Indenture pursuant to agreements reasonably satisfactory to the Trustee;

(3) immediately after such transaction no Default or Event of Default exists;

(4) the Company or the Person formed by or surviving any such consolidation or merger (if other than the Company), or to which such sale, assignment, transfer, conveyance or other disposition shall have been made will, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable eight-quarter period, be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of the covenant described above under the caption Incurrence of Indebtedness and Issuance of Preferred Stock; and

(5) the Company shall have delivered to the Trustee an Officers Certificate and an opinion of counsel, each stating that such merger, consolidation or sale of assets and such supplemental indenture, if any, comply with the Indenture.

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In addition, the Company may not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person. This Merger, Consolidation, or Sale of Assets covenant will not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Company and any of its Wholly Owned Restricted Subsidiaries.

### *Transactions with Affiliates*

The Company will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each, an Affiliate Transaction ), unless:

(1) such Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person or is approved by a majority of the disinterested members of the Board of Directors; and

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(2) (a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$10.0 million, such determination shall be set forth in a resolution adopted by the Board of Directors stating that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$25.0 million, the Board of Directors has received an opinion as to the fairness to the Holders of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of national standing or appraisal firm acceptable to the Trustee.

The following items shall not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of the prior paragraph:

(1) any transaction entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business and consistent with past practices;

(2) any transaction entered into by the Company and any of its Restricted Subsidiaries or between any of the Restricted Subsidiaries;

(3) transactions with a Person that is an Affiliate of the Company solely because the Company owns an Equity Interest in such Person;

(4) payment of reasonable directors fees to Persons who are not otherwise Affiliates of the Company and reasonable indemnification arrangements;

(5) Restricted Payments that are permitted by the provisions of the Indenture described above under the caption Restricted Payments; and

(6) any transaction entered into with ConAgra Foods or its Subsidiaries by the Company and any of its Restricted Subsidiaries.

***Issuances of Guarantees by Domestic Restricted Subsidiaries***

The Company will not permit any Domestic Restricted Subsidiary, directly or indirectly, to guarantee, assume or in any other manner become liable with respect to any Indebtedness of the Company which is pari passu with or subordinate in right of payment to the Notes ( Guaranteed Indebtedness ), unless (i) such Domestic Restricted Subsidiary simultaneously executes and delivers a supplemental indenture to the Indenture providing for a Subsidiary Guarantee by such Domestic Restricted Subsidiary and (ii) such Domestic Restricted Subsidiary waives and will not in any manner whatsoever claim, or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Restricted Subsidiary as a result of any payment by such Domestic Restricted Subsidiary under its Subsidiary



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Guarantee until the Notes have been paid in full. If the Guaranteed Indebtedness is (A) pari passu with the Notes, then the guarantee of such Guaranteed Indebtedness shall be pari passu with, or subordinated to, the Subsidiary Guarantee, or (B) subordinated to the Notes, then the guarantee of such Guaranteed Indebtedness shall be subordinated to the Subsidiary Guarantee at least to the extent that the Guaranteed Indebtedness is subordinated to the Notes.

Notwithstanding the foregoing, any such Subsidiary Guarantee by a Domestic Restricted Subsidiary of the Notes shall provide by its terms that it shall be automatically and unconditionally released and discharged if such Guarantor sells or otherwise disposes of all or substantially all of its assets to, or consolidates with or merges with or into (whether or not such Guarantor is the surviving Person), another Person, other than the Company or another Guarantor, in compliance with the terms described above in the fourth paragraph under the caption Subsidiary Guarantees.

### *Limitation on the Issuance and Sale of Equity Interests in Restricted Subsidiaries*

The Company will not sell, and will not permit any Restricted Subsidiaries, directly or indirectly, to issue or sell any Equity Interests of a Restricted Subsidiary except:

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(1) to the Company or a Wholly Owned Restricted Subsidiary;

(2) issuances of director s qualifying shares or sales to foreign nationals of shares of Capital Stock of Foreign Restricted Subsidiaries, to the extent required by applicable law;

(3) if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any Investment in such Person remaining after giving effect to such issuance or sale would have been permitted to be made under the Restricted Payments covenant if made on the date of such issuance or sale; or

(4) sales of Common Stock (including options, warrants or other rights to purchase shares of such Common Stock) of a Restricted Subsidiary by the Company or a Restricted Subsidiary, provided that the Company or such Restricted Subsidiary applies the Net Proceeds of any such sale in accordance with Repurchase at the Option of Holders Asset Sales above.

***Designation of Restricted and Unrestricted Subsidiaries***

The Board of Directors may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default. If a Restricted Subsidiary is designated an Unrestricted Subsidiary, all outstanding Investments owned by the Company and its Restricted Subsidiaries in the Subsidiary so designated will be deemed to be an Investment made as of the time of such designation and either will reduce the amount available for Restricted Payments under the first paragraph of the covenant described above under the caption Restricted Payments or will at the time of such designation qualify as a Permitted Investment, as the Company shall determine. All such outstanding Investments will be valued at their fair market value at the time of such designation. That designation will only be permitted if such Investment would be permitted at that time and if such Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if the redesignation would not cause a Default and such redesignation will increase the amount available for Restricted Payments under the first paragraph of the covenant described under the caption Restricted Payments as provided therein or Permitted Investments, as applicable.

***Payments for Consent***

The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder of Notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the Notes unless such consideration is offered to be paid and is paid to all Holders of the Notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

**EVENTS OF DEFAULT AND REMEDIES**

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Each of the following is an Event of Default:

(1) the Company defaults in the payment when due of interest on the Notes and such default continues for a period of 30 days;

(2) the Company defaults in the payment when due of principal of, or premium, if any, on the Notes;

(3) failure by the Company or any of the Guarantors to comply with the provisions described under the caption    Repurchase at the Option of Holders    Change of Control    or    Certain Covenants    Merger, Consolidation or Sale of Assets;

(4) failure by the Company or any of its Restricted Subsidiaries to comply with the provisions described under the captions  
Repurchase at the Option of Holders    Asset Sales,    Certain Covenants    Restricted Payments    and    Certain Covenants    Issuance of Indebtedness and  
Issuance of Preferred Stock    for 30 days after the date on which the Company has received written notice from the Trustee or the Holders of at  
least

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25% in principal amount of the then outstanding Notes specifying such failure and stating that such notice is a Notice of Default under the Indenture;

(5) failure by the Company or any of its Restricted Subsidiaries to comply with any of the other agreements in the Indenture for 60 days after the date on which the Company has received written notice from the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes specifying such failure and stating that such notice is a Notice of Default under the Indenture;

(6) the Company or any Restricted Subsidiary defaults under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries) whether such Indebtedness or guarantee now exists, or is created after the date of the Indenture, if that default:

(a) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness on the date of such default (a Payment Default ); or

(b) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates \$20.0 million or more;

(7) a final nonappealable judgment or final nonappealable judgments for the payment of money are entered by a court or courts of competent jurisdiction against the Company or any of its Restricted Subsidiaries and such judgment or judgments are not paid, discharged or stayed for a period (during which execution shall not be effectively stayed) of 60 days, provided that the aggregate of all such undischarged judgments exceeds \$20.0 million;

(8) except as permitted by the Indenture, any Subsidiary Guarantee is held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Subsidiary Guarantee; and

(9) certain events of bankruptcy or insolvency with respect to the Company or any of its Restricted Subsidiaries.

In the case of an Event of Default arising from certain events of bankruptcy or insolvency, with respect to the Company, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare all the Notes to be due and

payable immediately.

Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal or interest, if any) if it determines that withholding notice is in their interest.

The Holders of a majority in aggregate principal amount of the Notes then outstanding by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of interest or premium, if any, on, or the principal of, the Notes.

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The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture. Upon becoming aware of any Default or Event of Default, the Company is required to deliver to the Trustee a statement specifying such Default or Event of Default.

**SUBORDINATION**

The Company may not pay (except from the trust as provided in the Legal Defeasance and Covenant Defeasance provisions) principal of, or premium, if any, or interest on, the Notes, or make any deposit pursuant to the Legal Defeasance and Covenant Defeasance provisions, and may not repurchase, redeem or otherwise retire any Notes until all principal and other Obligations with respect to Senior Indebtedness is paid in full (collectively, "Pay The Notes") if (a) any principal, premium, interest or any other amount payable in respect of any Senior Indebtedness is not paid within any applicable grace period (including at maturity) or (b) any other default on Senior Indebtedness occurs and the maturity of such Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (1) the default has been cured or waived and any such acceleration has been rescinded or (2) such Senior Indebtedness has been paid in full in cash or otherwise satisfied in accordance with the terms thereof; provided, however, that the Company may pay the Notes without regard to the foregoing if the Company and the Trustee receive written notice approving such payment from the Representative of the holders of such Senior Indebtedness or, if there is no Representative, from the holders of such Senior Indebtedness.

During the continuance of any default (other than a default described in clause (a) or a default and acceleration described in clause (b) of the preceding paragraph) with respect to any Designated Senior Indebtedness pursuant to which the maturity thereof may be accelerated immediately without further notice (except any notice required to effect the acceleration) or the expiration of any applicable grace period, the Company may not pay the Notes for a period (a "Payment Blockage Period") commencing upon the receipt by the Company and the Trustee of written notice of such default from the Representative of the holders of such Designated Senior Indebtedness or, if there is no Representative, from the holders of such Designated Senior Indebtedness, specifying an election to effect a Payment Blockage Period (a "Payment Blockage Notice") and ending 179 days thereafter (unless such Payment Blockage Period is earlier terminated (a) by written notice to the Trustee and the Company from the Representative of the holders of such Designated Senior Indebtedness or, if there is no Representative, from the holders of such Designated Senior Indebtedness that gave such Payment Blockage Notice, (b) because such default is no longer continuing or (c) because such Designated Senior Indebtedness has been repaid in full in cash or otherwise satisfied in accordance with the terms thereof). Not more than one Payment Blockage Notice with respect to all issues of Designated Senior Indebtedness may be given in any consecutive 360-day period, irrespective of the number of defaults with respect to one or more issues of Designated Senior Indebtedness during such period. No non-payment default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be the basis for a subsequent Payment Blockage Notice. Following the expiration of any period during which the Company is prohibited from making payments on the Notes pursuant to a Payment Blockage Notice, the Company shall (unless otherwise prohibited as described in the first two sentences of this paragraph) resume making any and all required payments in respect of the Notes, including, without limitation, any missed payments, unless the maturity of any Designated Senior Indebtedness has been accelerated, and such acceleration remains in full force and effect.

The Company shall give prompt written notice to the Trustee of any default in the payment of any Senior Indebtedness or any acceleration under any Senior Indebtedness or under any agreement pursuant to which Senior Indebtedness may have been issued. Failure to give such notice shall not affect the subordination of the Notes to the Senior Indebtedness or the application of the other provisions provided in the above paragraphs.

If payment of the Notes is accelerated when Designated Senior Indebtedness is outstanding, the Company may not pay the Notes until three business days after the Representative of the holders of such Designated Senior Indebtedness or, if there is no Representative, the holders of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay the Notes only if the Indenture otherwise permits payment at that time.

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The Obligations of each Guarantor are subordinated in right of payment to the payment when due of all Senior Indebtedness of such Guarantor. This subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness to the extent and in the manner provided for the Notes and the Indenture.

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**CERTAIN DEFINITIONS**

Set forth below are certain defined terms used in the Indenture.

***Acquired Debt*** means, with respect to any specified Person:

(i) Indebtedness of any other Person existing at the time such other Person is merged with or into, or became a Subsidiary of, such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Subsidiary of, such specified Person; and

(ii) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

***Additional Senior Notes*** means any Senior Notes (other than Initial Senior Notes) issued under the Senior Notes Indenture in accordance with Section 3.01 of the First Supplemental Indenture dated August 9, 2011 between the Company and the Chase Manhattan Bank, as trustee, as part of the same series as the Initial Senior Notes or as an additional series.

***Affiliate*** of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, control, as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided, that beneficial ownership of 10% or more of the total voting power of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms controlling, controlled by and under common control with shall have correlative meanings.

***Asset Sale*** means:

(1) the sale, lease, conveyance or other disposition of any assets or rights, other than sales of inventory in the ordinary course of business; provided, that the sale, conveyance or other disposition of all or substantially all of the assets of the Company and its Restricted Subsidiaries taken as a whole will be governed by the provisions of the Indenture described above under the caption Repurchase at the Option of Holders Change of Control and/or the provisions described above under the caption Certain Covenants Merger, Consolidation or Sale of Assets and not by the provisions of the Asset Sale covenant; and

(2) the issuance of Equity Interests by any of the Company's Restricted Subsidiaries or the sale of Equity Interests in any of its Restricted Subsidiaries.



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Notwithstanding the preceding, the following items shall not be deemed to be Asset Sales:

(i) any single transaction or series of related transactions that involves assets having a fair market value of less than \$2.0 million;

(ii) a transfer of assets between or among the Company and its Restricted Subsidiaries;

(iii) an issuance of Equity Interests by a Restricted Subsidiary to the Company or to another Restricted Subsidiary;

(iv) the sale or lease of equipment, inventory, accounts receivable (or interests therein) or other assets in the ordinary course of business or pursuant to a Permitted Securitization Program;

(v) the sale or other disposition of cash or Cash Equivalents; and

(vi) the sale, lease or other disposition of any assets or rights to the extent constituting a Restricted Payment or Permitted Investment that is permitted by the covenant described above under the caption **Certain Covenants Restricted Payments**.

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**Attributable Debt** in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP.

**Beneficial Owner** has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular person (as that term is used in Section 13(d)(3) of the Exchange Act), such person shall be deemed to have beneficial ownership of all securities that such person has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms **Beneficially Owns** and **Beneficially Owned** shall have a corresponding meaning.

**Board of Directors** means either the board of directors of the Company or any duly authorized committee of that board.

**Capital Lease Obligation** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

**Capital Stock**, means:

- (1) in the case of a corporation, corporate stock;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but in any event excluding interests in pools of accounts receivable or inventory sold by a Securitization Subsidiary pursuant to a Permitted Securitization Program.

**Cash Equivalents** means:

- (1) United States dollars;

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(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (provided, that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than six months from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case, with any domestic commercial bank having capital and surplus in excess of \$500.0 million and a Thomson Bank Watch Rating of "B" or better;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having the highest rating obtainable from Moody's Investors Service, Inc. or Standard & Poor's Rating Services and in each case maturing within six months after the date of acquisition; and

(6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition.

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***Change of Control*** means the occurrence of any of the following:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries taken as a whole to any person or group (as such terms are used in Section 13(d)(3) of the Exchange Act) other than a Wholly Owned Restricted Subsidiary;
- (2) any person or group (as such terms are used in Section 13(d)(3) of the Exchange Act), other than the Pilgrim Family, becomes the ultimate beneficial owner, as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the total voting power of the Voting Stock of the Company on a fully-diluted basis;
- (3) the adoption of a plan relating to the liquidation or dissolution of the Company;
- (4) the consummation of any transaction (including, without limitation, any merger, consolidation or recapitalization) to which the Company is a party the result of which is that, immediately after such transaction, the holders of all of the outstanding Voting Stock of the Company immediately prior to such transaction hold less than 50.1% of the Voting Stock of the Person surviving such transaction, measured by voting power rather than number of shares; or
- (5) the first day on which a majority of the members of the Board of Directors of the Company are not Continuing Directors.

***Consolidated Cash Flow*** means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus:

- (1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; plus
- (2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus
- (3) consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued and whether or not capitalized (including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations), to the extent that any such expense was deducted in computing such Consolidated Net Income; plus

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(4) depreciation, amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; minus

(5) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business, in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding the preceding, the provision for taxes based on the income or profits of, and the depreciation and amortization and other non-cash expenses of, a Restricted Subsidiary of the Company, unless such Restricted Subsidiary is a Guarantor and its Subsidiary Guarantee remains in full force and effect, shall be added to Consolidated Net Income to compute Consolidated Cash Flow of the Company only to the extent that a

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corresponding amount would be permitted at the date of determination to be dividended or distributed to the Company or a Restricted Subsidiary by such Restricted Subsidiary without prior governmental approval (that has not been obtained), and without direct or indirect restriction pursuant to the terms of its charter and all agreements, instruments, judgments, decrees, orders, statutes, rules and governmental regulations applicable to that Restricted Subsidiary or its stockholders.

**Consolidated Net Income** means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided, that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the specified Person or a Wholly Owned Restricted Subsidiary thereof;

(2) the Net Income of any Restricted Subsidiary, unless such Restricted Subsidiary is a Guarantor and its Subsidiary Guarantee remains in full force and effect, shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, provided that the aggregate amount of such Net Income that could be paid to the Company or a Restricted Subsidiary by loans or advances or repayments of loans or advances, intercompany transfer or otherwise will be included in Consolidated Net Income;

(3) the Net Income of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition shall be excluded; and

(4) the cumulative effect of a change in accounting principles shall be excluded.

**Consolidated Tangible Net Worth** of any Person means, at any time, for such Person and its Restricted Subsidiaries on a consolidated basis, an amount computed equal to (a) the consolidated stockholders' equity of the Person and its Restricted Subsidiaries, minus, (b) all Intangible Assets of the Person and its Restricted Subsidiaries, in each case as of such time. For the purposes hereof, Intangible Assets means intellectual property, goodwill and other intangible assets, in each case determined in accordance with GAAP.

**Continuing Directors** means, as of any date of determination, any member of the Board of Directors of the Company who, during any period of two consecutive years:

(1) was a member of such Board of Directors on the date of the Indenture; or

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(2) was nominated for election or elected or appointed to such Board of Directors with the approval of a majority of the Continuing Directors who were members of such Board at the time of such nomination, election or appointment.

**Debt Rating** means the rating assigned to the Notes by Moody's or S&P, as the case may be.

**Default** means any event, act or condition that is, or after notice or with the passage of time or both would be, an Event of Default.

**Designated Senior Indebtedness** means:

(1) any Senior Indebtedness of the Company or a Guarantor that has, at the time of determination, an aggregate principal amount outstanding of at least \$25.0 million (including the amount of all undrawn commitments and matured and contingent reimbursement obligations pursuant to letters of credit thereunder) that is specifically designated in the instrument evidencing such Senior Indebtedness and in an Officers' Certificate delivered to the Trustee as Designated Senior Indebtedness of the Company for purposes of the Indenture; and

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(2) any Senior Indebtedness of the Company or a Guarantor outstanding under the Existing Credit Facilities, the Senior Notes Indenture or otherwise under clause (1) of the second paragraph of **Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock**, as the same may be amended, supplemented or otherwise modified from time to time, including amendments, supplements or modifications and any renewal, extension, refunding, restructuring, replacement or refinancing thereof (whether with the original agent and lenders or another administrative agent or agents or one or more other lenders and whether provided under the original Existing Credit Facilities or one or more other credit or other agreements or indentures).

**Disqualified Stock** means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders thereof have the right to require the Company to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Stock if the terms of such Capital Stock provide that the Company may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption **Certain Covenants Restricted Payments**.

**Domestic Borrowing Base** means, as of a date of determination, the sum of (i) 85% of the book value of the outstanding accounts receivable of the Company and its Domestic Restricted Subsidiaries (as such accounts receivable would be shown on a consolidated balance sheet of the Company and its Domestic Restricted Subsidiaries prepared in accordance with GAAP), less allowance for doubtful accounts, plus (ii) 80% of the inventory of the Company and its Domestic Restricted Subsidiaries (as such inventory would be shown on a consolidated balance sheet of the Company and its Domestic Restricted Subsidiaries prepared in accordance with GAAP); provided, that for purposes of determining the Domestic Borrowing Base as of a date of determination, any accounts receivable or inventory that has been sold or otherwise transferred to a Securitization Subsidiary pursuant to a Permitted Securitization Program shall not be included in the Domestic Borrowing Base for purposes of the calculation thereof.

**Domestic Restricted Subsidiary** means any Restricted Subsidiary that was formed under the laws of the United States or any state thereof or the District of Columbia.

**Equity Interests** means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

**Existing Credit Facilities** means, collectively, the Existing U.S. Credit Facilities and the Existing Foreign Credit Facility.

**Existing Foreign Credit Facility** means the facility evidenced by the Revolving Credit Agreement, by and among Grupo Pilgrim's Pride Funding, S. de R.L. de C.V., Comerica Bank Mexico, S.A. and Comerica Bank, dated September 7, 2001, and the related notes, collateral documents, guarantees and agreements, each as amended through the date of the Indenture.

**Existing U.S. Credit Facilities** means:



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(1) the facility evidenced by the Third Amended and Restated Note Purchase Agreement by and between the Company and John Hancock Life Insurance Company, dated August 30, 2002, and the related notes, collateral documents, guarantees and agreements, each as amended through the date of the Indenture;

(2) the facility evidenced by the Amended and Restated Credit Agreement by and among CoBank, ACB, individually and as Agent, Farm Credit Services of America, FLCA, and other Banks thereunder, dated November 16, 2000, and the related notes, collateral documents, guarantees and agreements, each as amended through the date of the Indenture; and

(3) the facility evidenced by the Second Amended and Restated Secured Credit Agreement, by and among the Company and Harris Trust and Savings Bank, individually and as Agent, and other Banks thereunder,

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dated November 5, 1999, and the related notes, collateral documents, guarantees and agreements, each as amended through the date of the Indenture.

**Fixed Charges** means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations; plus

(2) any interest expense on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; plus

(3) the product of (a) all dividends, whether paid or accrued, whether or not in cash, on any series of Preferred Stock of such Person or any of its Restricted Subsidiaries, other than dividends on Equity Interests payable solely in Equity Interests of such Person (other than Disqualified Stock) or to such Person or a Restricted Subsidiary of such Person, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, on a consolidated basis and in accordance with GAAP.

**Fixed Charge Coverage Ratio** means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, Guarantees, repays, repurchases or redeems any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the calculation of the Fixed Charge Coverage Ratio is made (the Calculation Date), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase or redemption of Indebtedness, or such issuance, repurchase or redemption of Preferred Stock, and the use of the proceeds therefrom as if the same had occurred at the beginning of the applicable eight-quarter reference period.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations and including any related financing transactions, during the eight-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given pro forma effect as if they had occurred on the first day of the eight-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated on a pro forma basis in accordance with Regulation S-X under the Securities Act, but without giving effect to clause (3) of the proviso set forth in the definition of Consolidated Net Income;

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(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded; and

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date.

**Foreign Borrowing Base** means, as of a date of determination, the sum of (i) 85% of the book value of the outstanding accounts receivable of the Company's Foreign Restricted Subsidiaries (as such accounts receivable would be shown on a combined balance sheet of the Company's Foreign Restricted Subsidiaries prepared in accordance with GAAP), less allowance for doubtful accounts, plus (ii) 80% of the inventory of the Company's

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Foreign Restricted Subsidiaries (as such inventory would be shown on a combined balance sheet of the Company's Foreign Restricted Subsidiaries prepared in accordance with GAAP); provided, that for purposes of determining the Foreign Borrowing Base as of a date of determination, any accounts receivable or inventory that has been sold or otherwise transferred to a Securitization Subsidiary pursuant to a Permitted Securitization Program shall not be included in the Foreign Borrowing Base for purposes of the calculation thereof.

**Foreign Restricted Subsidiary** means any Restricted Subsidiary that is not a Domestic Restricted Subsidiary and with respect to which more than 80% of its assets (determined on a consolidated basis in accordance with GAAP) are located in territories and jurisdictions outside of the United States of America.

**GAAP** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of the Indenture.

**Guarantee** means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Indebtedness.

**Guarantors** means any Restricted Subsidiary that executes a Subsidiary Guarantee in accordance with the provisions of the Indenture and its respective successors and assigns.

**Hedging Obligations** means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and other agreements or arrangements designed to protect such Person against fluctuations in interest rates;

(2) any foreign exchange contract, currency swap agreement or other similar agreement or arrangement designed to protect such Person against fluctuations in currency values; and

(3) any commodity futures or option contract or other similar commodity hedging contract designed to protect such person against fluctuations in commodity prices.

**Indebtedness** means, with respect to any specified Person, any indebtedness of such Person, whether or not contingent, in respect of:

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(1) borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof) (other than obligations with respect to letters of credit securing obligations (other than obligations described in clause (1), (2) and (4) of this definition) entered into in the ordinary course of business of such Person to the extent that such letters of credit are not drawn upon);

(3) banker's acceptances;

(4) representing Capital Lease Obligations;

(5) the balance deferred and unpaid of the purchase price of any property, except any such balance that constitutes an accrued expense or trade payable incurred in the ordinary course of business; or

(6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the

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specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date shall be:

- (1) the accreted value thereof, in the case of any Indebtedness issued with original issue discount; and
- (2) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness.

***Initial Holders*** means ConAgra Foods, its Affiliates and each of their respective principals, employees, partners, officers, members and directors.

***Initial Senior Notes*** means the 9 5/8% Senior Notes due 2011 of the Company issued under the Senior Notes Indenture.

***Investment Grade Status*** exists as of a date if at such date (i) the Debt Rating of Moody's is at least Baa3 (or the equivalent) or higher and (ii) the Debt Rating of S&P is at least BBB- (or the equivalent) or higher.

***Investments*** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the forms of direct or indirect loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Equity Interests of such Restricted Subsidiary not sold or disposed of in an amount determined as provided in the final paragraph of the covenant described above under the caption Certain Covenants Restricted Payments. The acquisition by the Company or any Restricted Subsidiary of the Company of a Person that holds an Investment in a third Person shall be deemed to be an Investment by the Company or such Restricted Subsidiary in such third Person in an amount equal to the fair market value of the Investment held by the acquired Person in such third Person in an amount determined as provided in the final paragraph of the covenant described above under the caption

Certain Covenants Restricted Payments. In addition, the fair market value of the net assets of any Restricted Subsidiary at the time that such Restricted Subsidiary is designated an Unrestricted Subsidiary shall be deemed to be an Investment made by the Company in such Unrestricted Subsidiary.

***Lien*** means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

**Moody's** means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

**Net Income** means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends, excluding, however:

(1) any gain (or loss), together with any related provision for taxes on such gain (or loss), realized in connection with: (a) any Asset Sale; or (b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries; and

(2) any extraordinary gain (or loss), together with any related provision for taxes on such extraordinary gain (or loss).

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**Net Proceeds** means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale), in net of the direct costs relating to such Asset Sale, including, without limitation, legal, accounting and investment banking fees, and sales commissions, and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof, in each case, after taking into account any available tax credits or deductions and any tax sharing arrangements; and amounts required to be applied to the repayment of Indebtedness.

**Non-Recourse Debt** means Indebtedness:

(1) as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), (b) is directly or indirectly liable as a guarantor or otherwise or (c) constitutes the lender; and

(2) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness (other than the Notes) of the Company or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity.

**Obligations** means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

**Permitted Investments** means:

(1) any Investment in the Company or in a Restricted Subsidiary of the Company;

(2) any Investment of receivables owing to the Company or any of its Restricted Subsidiaries, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms (provided, that nothing in this clause (2) shall prevent the Company or any Restricted Subsidiary from offering such concessionary trade terms as management deems reasonable in the circumstances);

(3) any Investment in Cash Equivalents;

(4) any Investment of Capital Stock, Obligations or other securities of any Person received by the Company or any of its Restricted Subsidiaries in settlement of Obligations created in the ordinary course of business and owing to the Company or such Restricted Subsidiary;



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(5) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

(6) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with the covenant described above under the caption *Repurchase at the Option of Holders* *Asset Sales* ;

(7) any acquisition of assets solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Company;

(8) Hedging Obligations, provided, that such Hedging Obligations constitute Permitted Debt permitted by clause (7) of the second paragraph under the caption *Certain Covenants* *Incurrence of Indebtedness and Issuance of Preferred Stock*;

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(9) Investments in a Person arising from the sale or transfer of assets primarily used in or related to, or Equity Interests of a Subsidiary of the Company whose assets primarily consist of those used in or related to, the Turkey Operations in connection with a joint venture including such Turkey Operations with a third party;

(10) Investments made in bonds, debentures and notes issued by any corporation organized under the laws of any State of the United States having Investment Grade Status from the aggregate proceeds of insurance premiums paid by the Company or a Restricted Subsidiary under a captive insurance arrangement and any earnings on such Investments; and

(11) other Investments made after the date of the Indenture in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (11) that are at the time outstanding, not to exceed \$70 million.

***Permitted Liens*** means:

(1) Liens on the assets of the Company and its Restricted Subsidiaries securing Indebtedness and other Obligations (in addition to those referred to in clauses (2) through (12) of this definition) to the extent that such Indebtedness (a) was outstanding on the date of the Indenture or was permitted to be incurred by the covenant entitled *Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock* at the time of such incurrence and (b) at the time of such incurrence did not exceed an aggregate principal amount outstanding at any one time of the greater of (x) \$585.0 million less the aggregate amount of all Net Proceeds of Asset Sales (other than a sale of all or a substantial portion of the assets used in the Turkey Operations), applied by the Company or any of its Subsidiaries to repay Indebtedness incurred pursuant to clause (1) of the second paragraph of the covenant entitled *Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock* pursuant to the covenant described under the caption *Repurchase at the Option of Holders Asset Sales* and (y) 75% of the fair market value of property, plant, equipment and intangibles (excluding goodwill) of the Company and its consolidated Restricted Subsidiaries;

(2) Liens on the assets of the Company and any Restricted Subsidiary securing Indebtedness and other Obligations to the extent that such Indebtedness is permitted to be incurred by clauses (2), (3) and (14)(b) of the second paragraph of the covenant entitled *Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock*;

(3) Liens on the assets of the Company and any Restricted Subsidiary securing Permitted Refinancing Indebtedness to the extent that (a) such Permitted Refinancing Indebtedness is permitted to be incurred by clause (11) of the second paragraph of the covenant entitled *Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock*, and (b) such Permitted Refinancing Indebtedness was incurred to refinance Indebtedness outstanding under clauses (1), (2), (3) or (14)(b) of such paragraph;

(4) Liens in favor of the Company or its Restricted Subsidiaries;

(5) Liens on property of a Person existing at the time such Person is acquired by, merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; provided, that such Liens were in existence prior to the contemplation of such acquisition, merger or consolidation and do not extend to any assets other than those of the Person acquired by, merged into or consolidated with the Company or the

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Restricted Subsidiary;

(6) Liens on property existing at the time of acquisition thereof by the Company or any Restricted Subsidiary of the Company; provided, that such Liens were in existence prior to the contemplation of such acquisition;

(7) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business;

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(8) Liens to secure Indebtedness permitted by clauses (5), (6), (8) and (10) of the second paragraph of the covenant entitled **Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock** (or Permitted Refinancing Indebtedness relating thereto, provided that the principal amount of the Indebtedness secured does not increase and the Liens do not extend to other property or assets) covering only the assets acquired with such Indebtedness;

(9) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently concluded, provided, that any reserve or other appropriate provision as shall be required in conformity with GAAP shall have been made therefor;

(10) Liens on accounts receivable or inventory of a Securitization Subsidiary or rights with respect thereto in connection with a Permitted Securitization Program;

(11) Liens encumbering customary initial deposits and margin deposits, and other Liens that are within the general parameters customary in the industry and incurred in the ordinary course of business, in each case, securing Indebtedness under Hedging Obligations designed solely to protect the Company or any of its Restricted Subsidiaries from fluctuations in interest rates, currencies or the price of commodities;

(12) Liens on the property of Foreign Restricted Subsidiaries and on intercompany Indebtedness to the Company to secure Indebtedness permitted by clause (13) of the second paragraph of the covenant entitled **Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock** ; and

(13) Liens incurred in the ordinary course of business of the Company or any Restricted Subsidiary of the Company with respect to obligations that do not exceed \$20.0 million at any one time outstanding.

***Permitted Refinancing Indebtedness*** means any Indebtedness of the Company or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Company or any of its Restricted Subsidiaries (other than intercompany Indebtedness); provided, that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable), of the Indebtedness so extended, refinanced, renewed, replaced, defeased or refunded (plus all accrued interest thereon and the amount of all customary expenses and premiums incurred in connection therewith); provided, however, that with respect to Indebtedness denominated in currency other than United States dollars, if the principal amount of such Indebtedness is extended, refinanced, renewed, replaced, defeased or refunded with Indebtedness denominated in the same foreign currency and not exceeding the principal amount (or accreted value, if applicable) thereof in such denomination of foreign currency, then it shall not be deemed to have exceeded the principal amount (or accreted value, if applicable) of the refinanced Indebtedness solely as a result of fluctuations in the exchange rate of such foreign currency;

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(2) such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(3) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; and

(4) such Indebtedness is incurred either by the Company or a Guarantor or by the Restricted Subsidiary who is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded.

***Permitted Securitization Program*** means a transaction or series of transactions (including amendments, supplements, extensions, renewals, replacements, refinancings or modifications thereof) pursuant to which a

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Securitization Subsidiary purchases accounts receivable or inventory from the Company or any Restricted Subsidiary and finances or sells such accounts receivables or inventory or fractional interests therein; provided, that (i) the Board of Directors shall have determined in good faith that such Permitted Securitization Program is economically fair and reasonable to the Company and the Securitization Subsidiary, (ii) all sales of accounts receivable or inventory by the Securitization Subsidiary are made at fair market value (as determined in good faith by the Board of Directors), (iii) the financing terms, covenants, termination events and other provisions thereof shall be market terms (as determined in good faith by the Board of Directors), (iv) no portion of the Indebtedness of a Securitization Subsidiary shall be Guaranteed Indebtedness or is recourse to the Company or any Restricted Subsidiary (other than to such Securitization Subsidiary and other than recourse for customary representations, warranties, covenants and indemnities) and (v) neither the Company nor any Subsidiary (other than the Securitization Subsidiary) has any obligation to maintain or preserve the Securitization Subsidiary's financial condition.

***Pilgrim Family*** means Lonnie A. Bo Pilgrim, his spouse, his issue, his estate and any trust, partnership or other entity primarily for the benefit of him, his spouse and/or issue.

***Preferred Stock*** means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) of such Person's preferred or preference stock, whether now outstanding or hereafter issued, including, without limitation, all series and classes of such preferred or preference stock.

***Public Equity Offering*** means a public offering and sale of Capital Stock (other than Disqualified Stock) for cash made on a primary basis by the Company after the date of the Indenture.

***Representative*** means the trustee, agent or representative expressly authorized to act in such capacity, if any, for an issue of Senior Indebtedness.

***Restricted Investment*** means an Investment other than a Permitted Investment.

***Restricted Subsidiary*** of a Person means any Subsidiary of the referent Person that is not an Unrestricted Subsidiary.

***S&P*** means Standard & Poor's Ratings Group, a division of McGraw Hill, or any successor to the rating agency business thereof.

***Securitization Subsidiary*** means a Restricted Subsidiary or an Unrestricted Subsidiary of the Company which is established for the limited purpose of acquiring and financing or selling (including, without limitation, interests therein) accounts receivable or inventory and engaging in activities ancillary thereto.

***Senior Indebtedness*** of the Company means all of its Obligations with respect to Indebtedness, whether outstanding on the date the Notes are first issued or thereafter incurred, and shall include (i) all obligations for interest accruing on or after the filing of any petition in bankruptcy or

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for reorganization relating to the Company whether or not such post-filing interest is allowed in such proceeding, (ii) all fees, expenses and indemnities and all other amounts payable with respect to Indebtedness and (iii) all Obligations in respect of the Existing Credit Facilities; provided, however, that Senior Indebtedness shall not include: (i) any obligation of the Company to any Subsidiary of the Company; (ii) any obligation in respect of the Notes or other Indebtedness of the Company that is by its terms is expressly subordinate, junior subordinate or pari passu in right of payment to the Notes; or (iii) any obligations with respect to any Capital Stock. To the extent that any payment of Senior Indebtedness (whether by or on behalf of the Company as proceeds of security or enforcement or any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to a trustee, receiver or other similar party under any Bankruptcy Law, then if such payment is recovered by, or paid over to, such trustee, receiver or other similar party, the Senior Indebtedness or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment had not occurred. Senior Indebtedness of any Guarantor has a correlative meaning and shall not include any obligation of such Guarantor to the Company or any other Subsidiary of the Company.

*Senior Guarantee* means a Guarantor's guarantee of the Senior Notes.

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**Senior Notes** means the Initial Senior Notes and any Additional Senior Notes.

**Senior Notes Indenture** means the Indenture, dated as of the date August 9, 2001, by and between the Company and The Chase Manhattan Bank, as trustee, governing the Senior Notes.

**Senior Subordinated Indebtedness** of the Company means the Notes and any other subordinated Indebtedness of the Company that specifically provides that such Indebtedness is to rank pari passu with the Notes and is not subordinated by its terms to any other subordinated Indebtedness or other obligation of the Company which is not Senior Indebtedness. Senior Subordinated Indebtedness of any Guarantor has a correlative meaning.

**Significant Subsidiary** means any Subsidiary that would be a significant subsidiary as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such regulation is in effect on the date hereof.

**Special Interest** means the additional interest, if any, to be paid on the Notes pursuant to the 10.50% Senior Subordinated Notes due March 4, 2011 Registration Rights Agreement dated \_\_\_\_\_, 2003, at a rate from 0.25% per annum up to a maximum of 1.00% per annum on the principal amount of the Notes in the event of a registration default under such agreement until such registration default has been cured.

**Stated Maturity** means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which such payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof.

**Subordinated Indebtedness** means any Indebtedness of the Company or a Guarantor if the instrument creating or evidencing such Indebtedness or pursuant to which such Indebtedness is outstanding expressly provides that such Indebtedness is subordinated in right of payment to the Notes or the Guarantee of such Guarantor, as the case may be.

**Subsidiary** means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).



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***Turkey Operations*** means the Company's and/or its Restricted Subsidiaries' turkey operations as substantially constituted on the date of the Indenture.

***Unrestricted Subsidiary*** means any Subsidiary of the Company that is designated by the Board of Directors as an Unrestricted Subsidiary pursuant to a Board Resolution, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of the Company;

(3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

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(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries.

Any designation of a Subsidiary of the Company as an Unrestricted Subsidiary shall be evidenced to the Trustee by filing with the Trustee a certified copy of the Board Resolution giving effect to such designation and an Officers Certificate certifying that such designation complied with the preceding conditions and was permitted by the covenant described above under the caption Certain Covenants Restricted Payments. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Indebtedness of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Company as of such date and, if such Indebtedness is not permitted to be incurred as of such date under the covenant described under the caption Incurrence of Indebtedness and Issuance of Preferred Stock, the Company shall be in default of such covenant. The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, that such designation shall be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of the Company of any outstanding Indebtedness of such Unrestricted Subsidiary and such designation shall only be permitted if (1) such Indebtedness is permitted under the covenant described under the caption Certain Covenants Incurrence of Indebtedness and Issuance of Preferred Stock, calculated on a pro forma basis as if such designation had occurred at the beginning of the eight-quarter reference period, and (2) no Default or Event of Default would be in existence following such designation.

**U.S. Government Obligations** means direct noncallable obligations of, or noncallable obligations the payment of principal of and interest on which is guaranteed by, the United States of America, or to the payment of which obligations or guarantees the full faith and credit of the United States of America is pledged, or beneficial interests in a trust the corpus of which consists exclusively of money or such obligations or a combination thereof.

**Voting Stock** of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

**Weighted Average Life to Maturity** means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(1) the sum of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount of such Indebtedness.

**Wholly-Owned Restricted Subsidiary** of any specified Person means a Restricted Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors qualifying shares and shares issued to other Persons to comply with local law that collectively do not constitute more than 5% of all of the Capital Stock ordinarily having the power to vote for the election of directors of such Restricted Subsidiary) shall at the time be owned by such Person or by one or more Wholly Owned Restricted Subsidiaries of such Person and one or more Wholly Owned Restricted Subsidiaries of such Person.

