

identify Dow as a party in interest with respect to the Plans.<sup>10</sup> DCMC purchased on October 25, 2000, on behalf of the Plans, certain corporate debt securities issued by Dow (*i.e.*, the Bonds). The decision to purchase the Bonds was made by employees of DCMC who specialize in purchases of corporate debt securities. The principal amount of the Bonds purchased by the Plans was \$2,000,000. The Bonds were purchased in a principal transaction by the Plans from UBS Warburg, an entity unrelated to the Plans. The Bonds were sold in a subsequent principal transaction by the Plans to Lehman Brothers, an entity unrelated to the Plans. The Bonds were purchased on October 25, 2000 for \$1,975,320 (including accrued but unpaid interest) and were sold on July 10, 2001 for \$2,101,900 (including accrued but unpaid interest).

6. It is represented that Dow issued a total of \$1 billion of the Bonds. Accordingly, the Plans purchased 0.2% of the total Bond issue. The coupon rate on the Bonds was 7 $\frac{3}{8}$ % per annum. The Bonds had a credit rating of A/A1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. The applicant represents that the expected duration of the Bonds was approximately 11.9 years. The Bonds were debentures with interest payable semi-annually and principal payable at maturity. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than .02% of the Trust's total assets at the time of the acquisition.

7. The applicant states that the transaction was in the interests of the Plans' participants and beneficiaries since the acquisition and sale of the Bonds resulted in a profit totaling \$126,580. Moreover, the applicant represents that the purchase of the Bonds was equitable to the Plans since

the Plans paid no more than the current fair market value for the Bonds at the time of the acquisition. In this regard, it is represented that in providing the acquisition price of the Bonds to DCMC, the DCMC trader responsible for the purchase of the Bonds utilized pricing mechanisms commonly employed in the over-the-counter fixed income markets. Specifically, the purchase price was determined in consideration of competitive offers from multiple dealers.<sup>11</sup>

The applicant represents that upon identifying the extension of credit as a prohibited transaction, DCMC acted promptly to deal with the problem by filing for a retroactive exemption with the Department. In addition, the applicant has established new internal compliance procedures for considering any new purchases of debt instruments for client pension plans in order to avoid future prohibited transactions under the Act. According to the applicant, special lists must now be maintained for each Plan of all joint ventures of DuPont or a subsidiary where DuPont owns (directly or indirectly) at least 50% of the joint venture and another joint venturer owns at least 10% of the joint venture. Pursuant to compliance procedures, the applicant's bond trading personnel must check these lists prior to any new purchases of such bonds for the Plans. The lists must be updated monthly.

8. In summary, the applicant represents that the proposed exemption will satisfy the criteria of section 408(a) of the Act because:

- (a) The purchase of the Bonds by the Plans was a one-time cash transaction;
- (b) The Plans purchased the Bonds at their current fair market value from an unrelated party, based on prices determined by a reputable, independent third party market source;
- (c) The purchase of the Bonds was not part of an arrangement, agreement, or understanding designed to benefit Dow or any other party in interest with respect to the Plans;

(d) The purchase and sale of the Bonds resulted in the Plan's receipt of a profit totaling \$126,580; and

(e) The applicant has established new internal compliance procedures to avoid future prohibited transactions under the Act for acquisition of bonds by the Plans.

**FOR FURTHER INFORMATION CONTACT:** Brian Buyniski of the Department at (202) 693-8545. (This is not a toll-free number).

**DuPont Capital Management Corporation (DCMC), Located in Wilmington, DE**

[Application Nos. D-11114, 11115, 11116, 11117, 11118]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the past extension of credit from the DuPont Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan, the Protein Technologies International Retirement Plan and the DuPont Savings and Investment Plan (collectively, the Plans)<sup>12</sup> to ConAgra Foods, Inc. (ConAgra), a party in interest with respect to the Plans, as a result of the holding by the Plans of certain corporate debt securities (the Bonds) issued by ConAgra, for the period from September 5, 2001 until October 17, 2001, provided the following conditions were satisfied:

- (a) The purchase of the Bonds by the Plans was a one-time transaction for cash;
- (b) The Plans paid no more than the current fair market value for the Bonds at the time of the transaction, as determined by reputable, independent, third party market sources;
- (c) The Bonds were sold on October 17, 2001 for \$4,234,531 at a profit of \$185,638 for the Plans;
- (d) The purchase of the Bonds was not part of an agreement, arrangement or understanding designed to benefit ConAgra or any other party in interest with respect to the Plans; and
- (e) The transaction represented less than 1% of each Plan's total assets.

**Effective Date of Exemption**

The proposed exemption, if granted, will be effective for the period from

<sup>10</sup> In this proposed exemption, the Department is providing no opinion as to whether the Plans' acquisition and holding of the Bonds violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act other than section 406(a). In this regard, the applicant has not requested, nor is the Department providing, any relief from section 406(b) of the Act in connection with the subject transactions. The Department notes that section 406(b) of the Act provides, in pertinent part, that a fiduciary of a plan shall not deal with the assets of the plan in his own interest or for his own account, nor act on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. In addition, section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan.

<sup>11</sup> Pricing sources for the acquisition of the Bonds were electronic sources on trader desks. Information concerning dealer quotes is updated via computer monitors available to each of the primary security dealers. These sources include, but are not limited to, Bloomberg, Telerate, Reuters, Salomon Yield Book and Lehman Brothers PC Product in addition to daily flow and pricing indications received directly from 10-15 broker/dealers.

<sup>12</sup> Because the Plans are funded through the same trust and each has an undivided interest in the assets of such trust, this application will treat the purchase of the Bonds (as defined herein) by the Plans as a single transaction and information concerning such purchase will be discussed on an aggregate basis.