

September 5, 2001 (the date of the acquisition of the Bonds by the Plans) until October 17, 2001 (the date the Bonds were sold).

Summary of Facts and Representations

1. The applicant is DuPont Capital Management Corporation (DCMC), a wholly owned subsidiary of E.I. duPont de Nemours and Company (DuPont), and organized as a Delaware corporation with its principal office in Wilmington, Delaware. As of December 31, 2001, DCMC had total assets under its management with an aggregate market value of approximately \$19.3 billion. DCMC is an investment advisor, registered under the Investment Advisers Act of 1940, for the assets of the DuPont Pension Trust Fund (the Trust), which holds the assets of the Plans. DCMC has managed the assets of the Trust since July 1997. The aggregate fair market value of the Trust's assets is in excess of \$13 billion.

2. DuPont is the plan sponsor of the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan. The applicant estimates that there are currently 156,677 participants and beneficiaries in the DuPont Pension and Retirement Plan and 84,562 in the DuPont Savings and Investment Plan. Pioneer Hi-Bred International Inc. and Protein Technologies International, each of which is a subsidiary of DuPont, are the plan sponsors of the Pioneer Hi-Bred International Inc. Retirement Plan and the Protein Technologies International Retirement Plan, respectively. The applicant represents that there are currently 5,000 participants and beneficiaries in the Pioneer Hi-Bred International, Inc. Retirement Plan, and 734 participants and beneficiaries in the Protein Technologies International Retirement Plan.

3. The applicant represents that DCMC provides investment management services to various employee benefit plans, including plans sponsored by DuPont and its subsidiaries (*i.e.*, Pioneer Hi-Bred International, Inc. and Protein Technologies International) and affiliates (collectively, the DuPont Group), with respect to a spectrum of investments consisting primarily of domestic and international equities, fixed-income securities, and various alternative investments (including real estate, venture capital, and commodity futures). DCMC utilizes value-based investment strategies with the objective of achieving maximum return consistent with levels of risk suitable to each Plan.

4. DuPont and ConAgra participate in a 50/50 joint venture known as Ecological Chemical Products

(Ecochem), as a result of which ConAgra is a party in interest with respect to the Plans. In this regard, ConAgra is a party in interest with respect to the Plans under section 3(14)(I) of the Act because it is a 10% or more joint venturer of Ecochem. Ecochem is a party in interest with respect to the DuPont Pension and Retirement Plan and the DuPont Savings and Investment Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont (which is a party in interest with respect to such Plan under section 3(14)(C) of the Act). Ecochem is a party in interest with respect to each of DuPont Dow Elastomers Pension and Retirement Plan, the Pioneer Hi-Bred International, Inc. Retirement Plan and the Protein Technologies International Retirement Plan under section 3(14)(G) of the Act, as an entity 50% owned by DuPont which is a party in interest with respect to such Plans under section 3(14)(E) of the Act. According to the applicant, the value of DuPont's interest in Ecochem represents less than 1% of DuPont's total net value.

5. According to the applicant, as a result of the inadvertent failure to identify ConAgra as a party in interest with respect to the Plans,¹³ DCMC purchased on September 5, 2001, on behalf of the Plans, certain corporate debt securities issued by ConAgra (*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 \$4,051,000. The Bonds were purchased in a principal transaction by the Plans from Merrill Lynch, an entity unrelated to the Plans, as part of a new issuance of the Bonds by the issuer, ConAgra. The Bonds were sold in a subsequent principal transaction by the Plans to UBS Warburg, an entity unrelated to the Plans. The Bonds were purchased by the Plans on September 5, 2001 for \$4,048,893 (including accrued

but unpaid interest) and were sold on October 17, 2001 for \$4,234,531 by the Plans (including accrued but unpaid interest).

6. It is represented that ConAgra issued a total of \$1 billion of the Bonds. Accordingly, the Pension Plans and Savings Plan purchased 0.41% of the total Bond issue. The coupon rate on the Bonds was 6.75% per annum. The Bonds had a credit rating of BBB+/Baa1 by Standard and Poor's Rating Services and Moody's Investor Service, Inc., respectively, at the time of the Plans' purchase. No change in such rating occurred while the Bonds were held by the Plans. The applicant represents that the expected duration of the Bonds was approximately 6.7 years. The Bonds paid interest semi-annually, with the total principal amount payable at maturity. The Bonds also had certain special features that allowed them to be called (*i.e.*, redeemed) by the issuer, at certain times. The Bonds represented a de minimus percentage of each Plan's total assets. In the aggregate the Bonds represented less than 1% 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 \$185,638. 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, the Bonds were purchased by the Plans at the same price that was paid by all other investors at the time of issuance by ConAgra. Thus, the DCMC trader responsible for the purchase of the Bonds relied on the pricing mechanisms that were used by Merrill Lynch and the other underwriters in determining the price of the Bonds at the time of issuance. DCMC represents that the pricing mechanisms for the Bonds were those commonly employed in the over-the-counter fixed-income markets.

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

¹³ 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.